



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-07711
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

July 30, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Foreign Influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on May 21, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 4, 2010. DOHA issued a notice of hearing on June 10, 2010, and the hearing was convened as scheduled on June 10, 2010. DOHA received the transcript of the hearing (Tr.) on June 18, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant requested an expedited hearing to accommodate her trip to the United States from Iraq, where she has been working as a linguist for a defense contractor. She affirmatively waived her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

Request for Administrative Notice

Department Counsel submitted written requests that I take administrative notice of certain facts about Iraq and Syria. Applicant did not object to either request, and they were approved. The requests and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE) I and II. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The Government offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified and submitted Exhibits (AE) A through E, which were admitted without objection.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. She is seeking to retain a security clearance she has held without a violation since 2004. She was born in Iraq. She graduated from high school in Iraq. She married in 1990 and divorced in 2005. She has a 15-year-old child, who was born in the United States.¹

Applicant came to the United States in 1990 to visit an aunt who lived here. Iraq invaded Kuwait about three months after she arrived in the United States. She met her husband, who was an Iraqi citizen but was living in the United States as a permanent resident at the time. He is now a U.S. citizen. They married and she remained in the United States. She became a U.S. citizen in 2000.²

Applicant's parents immigrated to the United States in 2001. Her mother became a U.S. citizen in 2007. Her father became a U.S. citizen in 2009.³

Applicant has a brother and a sister who are still Iraqi citizens. Her brother fled Iraq in the early 1990s to avoid mandatory military service. He was able to make his way to Denmark, where he was granted asylum. He currently lives in Denmark.

¹ Tr. at 33, 37-43, 69-70; GE 1-4.

² Tr. at 33-40; GE 1-4.

³ Tr. at 49-50; GE 1-5.

Applicant's mother is in the process of sponsoring him for immigration to the United States.⁴

Applicant's sister is married with two children. Her husband and their children are also Iraqi citizens. He worked for an Iraqi company that did contract work for a U.S. company. He felt threatened by insurgent groups, and they moved to Syria in the mid 2000s. Applicant's sister and her husband do not work in Syria. They are supported financially by Applicant and her parents, who are also sponsoring them for immigration to the United States.⁵

Applicant visited her parents and her sister in Iraq in 2000. Her sister was getting married, and her father had recently had a heart attack. She has numerous aunts, uncles, and cousins who are citizens and residents of Iraq. None of her family members are associated with the governments of Iraq or Syria or have any connection to any terrorist organization. Applicant has not visited any family members in Iraq since 2000. Her extended family members in Iraq are not aware that she has been working in Iraq since 2005. Her sister knows Applicant works in Iraq, but she does not know what she does. Applicant does not communicate with any of her overseas relatives while she is in Iraq. The only time she communicates with them is when she returns to the United States on vacation.⁶

Applicant is a proud supporter and contributor to the mission in Iraq. She loves the United States, where she is able to live in peace and freedom, and people have similar values and beliefs as she and her family.⁷

Applicant has been a linguist for defense contractors since 2003. From 2003 to 2005, she worked in Qatar. She has worked in Iraq since 2005. Applicant has experienced combat situations in Iraq, including rocket and mortar attacks. She is willing to accept the danger because she believes in the mission. She submitted copies of 20 military, defense, and contractor "coins" she has received throughout her time overseas. She received multiple certificates of achievement from senior military and defense personnel for her outstanding support of Operation Iraqi Freedom.⁸ One certificate noted:

This certificate is presented in sincere appreciation of your dedication and outstanding support in the processing and exploitation of the material captured during the attack on [place and date of attack]. As direct results of your work, captured insurgents responsible for the attack are being

⁴ Tr. at 47-49, 51-53; Applicant's response to SOR; GE 1-4; AE B.

⁵ Tr. at 47-49, 53-57, 61; Applicant's response to SOR; GE 1-4; AE A, C.

⁶ Tr. at 53, 61-68, 71; Applicant's response to SOR; GE 1-4.

⁷ Tr. at 34, 46, 56, 72-73, 87-90.

⁸ Tr. at 40-44, 73, 84-86; GE 1-4; AE D, E.

brought to justice. Thank you for your contributions to [defense agency] and our nation's war on terror.⁹

Applicant submitted numerous letters attesting to her outstanding job performance, commitment, dedication, expertise, professionalism, and judgment. One author noted that Applicant "rendered exceptionally meritorious service in a designated combat zone while translating documents of extreme National interest."¹⁰

Applicant credibly testified that she would report to security personnel any attempt to use her family against her. She reported another linguist in Iraq who requested that she commit a security violation.¹¹

Iraq

The Iran-Iraq war (1980-88) devastated the economy of Iraq. Iraq declared victory in 1988 but actually achieved a weary return to the status quo antebellum. The war left Iraq with the largest military establishment in the Gulf region but with huge debts and an ongoing rebellion by Kurdish elements in the northern mountains. The government suppressed the rebellion by using chemical and biological weapons on civilian targets, including a mass chemical weapons attack on the Kurdish city of Halabja that killed several thousand civilians.

Iraq invaded Kuwait in August 1990, but a U.S.-led coalition acting under United Nations (UN) resolutions expelled Iraq in February 1991. After the war, Kurds in the north and Shi'a Muslims in the south rebelled against the government of Saddam Hussein. The government responded quickly and with crushing force, killing thousands, and pursued damaging environmental and agricultural policies meant to drain the marshes of the south.

In 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. Following the swift invasion and successful removal of Hussein's government from power, the United States endeavored to set a solid foundation of democratic institutions in Iraq. The Constitution in Iraq was ratified on October 15, 2005. After free elections in 2005, Iraq's new government, a parliamentary democracy, took office in March 2006.

In 2007, 92% of Iraq's exports were in crude oil and crude oil materials. Almost half of Iraq's exports went to the United States. The United States' ultimate goal in Iraq is to establish a peaceful, united, stable, democratic, and secure nation that will be an ally of the United States in the war against terrorism. The United States has invested

⁹ AE E.

¹⁰ *Id.*

¹¹ Tr. at 72-73.

thousands of lives and billions of dollars to assist in the reconstruction of Iraq. Success in Iraq is a high national priority of the United States.

Despite the elections and new government, Baghdad, Mosul, and several other areas have especially serious problems with violent terrorists and insurgents. Although there have been recent improvements in the security environment, Iraq remains dangerous, volatile, and unpredictable. Some areas of Iraq are more peaceful and less susceptible to terrorist attacks than others; however, all areas of the country are still very dangerous. Terrorists have the ability to strike most areas of the country with explosive devices and mines. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists by U.S. and Iraqi forces, the threat of terrorism in Iraq remains very high. Terrorist groups can conduct intelligence activities as effectively as state intelligence services.

Human rights concerns include a climate of violence; misappropriation of official authority by sectarian, criminal, and extremist groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; impunity; poor conditions in pretrial detention and prison facilities; denial of fair public trials; delays in resolving property restitution claims; immature judicial institutions lacking capacity; arbitrary arrest and detention; arbitrary interference with privacy and home; other abuses in internal conflicts; limitations on freedoms of speech, press, assembly, and association due to sectarianism and extremist threats and violence; restrictions on religious freedom; restrictions on freedom of movement; large numbers of internally displaced persons (IDPs) and refugees; lack of protection of refugees and stateless persons; lack of transparency and widespread, severe corruption at all levels of government; constraints on international organizations and nongovernmental organizations' (NGOs) investigations of alleged violations of human rights; discrimination against and societal abuses of women and ethnic and religious minorities; human trafficking; societal discrimination and violence against individuals based on sexual orientation; and limited exercise of labor rights.

Syria

Syria borders on Iraq, Israel, Turkey, and Lebanon. Syria is approximately the same size as North Dakota. Syria's population is about 19 million people. Officially Syria is a republic; however, in reality it is ruled by an authoritarian regime. Syria is included on the U.S. State Department's List of State Sponsors of Terrorism. There are several known terrorist groups in Syria. The government of Syria continues to provide political and material support to Hezbollah and Palestinian terrorist groups. Several terrorist groups maintain their offices and some of their leadership in Syria. In addition, the government of Syria permits Iran to transfer weapons and supplies through their country to assist terrorists in Lebanon. Syria is one of the main transit points for foreign fighters entering Iraq. A travel warning for Syria warns about the risks of terrorism due to the September 2006 attack on the U.S. embassy in Damascus. Syrian forces killed the four individuals who attacked the U.S. embassy in 2006. There have been other attacks on the U.S. Ambassador's residence and the U.S. embassy in 1998 and 2000. The United

States instituted economic sanctions against Syria due to their active and passive support of terrorism in the Middle East. No commercial aircraft owned or operated by the Syrian government may take off or land in the United States.

There are human rights abuses in Syria that include: systematic repression of Syrian citizens' ability to peacefully change the government; arbitrary and unlawful deprivation of life; torture and physical abuse of prisoners and detainees; arbitrary arrests and detentions; restrictions on freedom of speech, press, assembly, and association; government corruption; and violence and discrimination against women. Torture is occasionally used, including against foreign citizens. Security personnel have placed foreign visitors under surveillance, have monitored telephones, and have searched hotel rooms and possessions of foreign citizens.

Syria opposed the Iraq war in 2003, and foreign relations between Syria and the United States deteriorated. In 2005, the United States withdrew its ambassador to Syria after the assassination of Lebanese Prime Minister Hariri.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Guideline B, Foreign Influence

The security concern for Foreign Influence is set out in AG ¶ 7 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant has family members who are Iraqi citizens. Her brother is an Iraqi citizen and a resident of Denmark. Her sister and her sister’s family are citizens of Iraq

and residents of Syria, a country that is clearly hostile to the United States.¹² Syria is a state sponsor of terrorism, and the Syrian government has committed numerous, serious human rights abuses against its people. Applicant has aunts, uncles, and cousins who are citizens and residents of Iraq. Iraq has human rights issues, and it has been victimized by terrorism. The presence of Applicant's family members in Syria and Iraq creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

The presence of Applicant's brother in Denmark does not create a potential conflict of interest or a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. SOR ¶ 1.a is concluded for Applicant.

Applicant sends money to her sister in Syria. That is evidence of Applicant's ties of affection to her sister. The security concerns raised by Applicant's sister are already alleged in SOR ¶ 1.b. There are no independent Foreign Influence security concerns raised by the money transfer. SOR ¶ 1.d is concluded for Applicant.

Applicant traveled to Iraq in 2000 to visit family members. That has no independent security significance.¹³ SOR ¶ 1.e is concluded for Applicant.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has been in the United States since 1990, and she has been a U.S. citizen since 2000. Her parents are now U.S. citizens and residents. She loves the peace and freedom offered to her by America, and desires the same for her brother and sister. Her brother fled Iraq in the early 1990s and has settled in Denmark, a country that does not create a risk for foreign influence or exploitation. She has extended family members in Iraq and her sister's family lives in Syria. Those countries have continuing

¹² ISCR Case No. 06-18337 (App. Bd. Feb. 8, 2008).

¹³ See ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005).

human rights and terrorist concerns. Because of the nature of those governments and the terrorist concerns, I am unable to find AG ¶ 8(a) applicable.

Applicant has served the Iraqi mission since 2003, first from Qatar, and since 2005 from Iraq. She served in a combat zone and has been subject to mortar and missile attacks because she believes in the mission. She made a significant contribution to the war effort. She has held a security clearance without violation and reported another linguist for an infraction. She has not visited any family members living in Iraq since 2000. She does not communicate with her overseas family members while she is in Iraq. She credibly testified that she would report to security officials any attempt to use her family members against her. The Appeal Board has stated that such testimony, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he or she made a significant contribution to the national security.¹⁴ In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I find Applicant has such deep and longstanding relationships and loyalties in America that she can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

Analysis

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

¹⁴ ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and service in Qatar and Iraq. I also considered the totality of Applicant's family ties to Iraq. Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."¹⁵ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. I have also considered the totality of Applicant's family ties to Syria, a country that is clearly hostile to the United States, and the heavy burden an applicant carries when he or she has family members in a hostile country. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

¹⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. She credibly testified that she would report any attempt to use her family members to coerce her to reveal classified information. The Appeal Board has held that “generally, an applicant’s statements, by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant’s proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case.”¹⁶ Iraq and Syria have human rights and terrorism issues. The complicated state of affairs in those countries places a significant burden of persuasion on Applicant to demonstrate that her foreign family members do not pose an unacceptable security risk. She has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

¹⁶ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).