



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



In the matter of: )  
)  
) ISCR Case No. 09-07940  
)  
Applicant for Security Clearance )

**Appearances**

For Government: J. Theodore Hammer, Esq., Department Counsel  
For Applicant: Kathleen E. Voelker, Esq.

April 15, 2011

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On June 30, 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. DOHA acted 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 5, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 8, 2010. DOHA issued a notice of hearing on November 10, 2010, and the hearing was convened as scheduled on December 21, 2010. DOHA received the transcript of the hearing (Tr.) on December 30, 2010.

## Procedural and Evidentiary Rulings

### Request for Administrative Notice

Both Department Counsel and Applicant's counsel submitted written requests that I take administrative notice of certain facts about Iraq. Neither side objected to the requests 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 III. The facts administratively noticed are set out in the Findings of Fact, below.

### Evidence

The Government offered Exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as HE II. Applicant testified and offered Exhibits (AE) A through P, which were admitted without objection. Applicant's exhibit index is marked as HE IV. The record was held open for Applicant to submit additional information. Applicant submitted AE Q and R, which were admitted into evidence without objection. Applicant's post-hearing memorandum is marked HE V.

### Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. She is seeking to retain a security clearance she has held without a violation since 2008. She was born in Iraq. She graduated from high school and college in Iraq. She married in 1988 and divorced in 2010. She has a son and daughter, ages 20 and 13, who were born in Iraq, but who are now United States citizens.<sup>1</sup>

Applicant came to the United States in 2000. Her husband came to the United States in 1998 and, once established, brought Applicant and their two children to this country. Applicant's husband came to the United States as a political refugee because of his work with a foreign humanitarian organization after the Gulf War in 1991. Applicant became a United States citizen in October 2007.<sup>2</sup>

Applicant's parents reside in and are citizens of Iraq. Her father is 79 years old and currently unemployed. He retired from the Iraq army in 1984 after serving for 25 years. He receives a \$200 monthly pension. Her mother is 69 years old and is unemployed. They have never left Iraq. Neither one is affiliated with the Iraqi government. Both have applied for immigration visas to the United States. Applicant last saw her parents in 2005 when she traveled to Iraq to see them. She has regular contact with them by telephone.<sup>3</sup>

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<sup>1</sup> Tr. at 38-39, 41-42; GE 1.

<sup>2</sup> Tr. at 40-45; GE 1.

<sup>3</sup> Tr. at 64-72, 74, 76; GE 1, 2; AE L-M.

Applicant has four brothers, three of whom are Iraqi citizens, and one is a German citizen. One brother performed mandatory military service in Iraq then moved to Germany where he now lives. He has no affiliation with the Iraqi government. One brother lives in Sweden and works for a commercial business there. He has no affiliation with the Iraqi government. Her two brothers living in Iraq work for a family business. Neither have affiliations with the Iraqi government. One of these brothers applied for a United States immigration visa. Applicant contacts her brothers about once a month by telephone.<sup>4</sup>

Applicant's sister is a citizen and resident of Sweden. She has no affiliations with the Iraqi government. Applicant contacts her by telephone twice a week. Applicant's former father-in-law resides in Iraq. He is unemployed and has no affiliation with the Iraqi government. Applicant has contact with him about once a month. One former sister-in-law resides in Iraq. She works for a commercial business and has no affiliation with the Iraqi government. Applicant has contact with her former sister-in-law about once a month.<sup>5</sup>

Applicant visited her family in Iraq in 2005. She went there after her first tour as a linguist. None of her family members are associated with the government of Iraq or have any connection to any terrorist organization. Applicant has not visited any family members in Iraq since 2005. Her family members in Iraq are not aware that she has been working in Iraq since 2009. The only time she communicates with them is when she returns to the United States on vacation.<sup>6</sup>

Applicant is a proud supporter and contributor to the mission in Iraq. She volunteered to perform linguist duties in Iraq from April 2004 to May 2005. She then volunteered to go back to Iraq in April 2009. She believes that she has valuable skills that can help both the United States and Iraq. She intends to return to the United States after her linguist duties are over. She wants her children to be educated in the United States.<sup>7</sup>

Applicant has been a linguist for defense contractors at various times since 2005. She worked in Iraq in 2005 and recently since April 2009. Applicant has experienced combat situations in Iraq, including rocket and mortar attacks and improvised explosive device (IED) detonations. She is willing to accept the danger because she believes in the mission. She would immediately report any attempt to seek information from her by any unauthorized source. She submitted copies of eight letters from military officers and contractor supervisors attesting to her competency and outstanding support for the mission. All the military officers she worked for unconditionally recommended her for a security clearance. She also received multiple certificates of achievement from senior

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<sup>4</sup> Tr. at 77-79; GE 2.

<sup>5</sup> Tr. at 50-54.

<sup>6</sup> Tr. at 53, 61-68, 71.

<sup>7</sup> Tr. at 50, 54, 58-59, 62-63, 92.

military and defense personnel for her outstanding support of Operation Iraqi Freedom.<sup>8</sup> One certificate noted:

For your outstanding support, dedication, and leadership to [unit supported] of [location]. Your selfless service ensuring the security of all Iraqi citizens is vital to the preservation of freedom and prosperity. Your actions reflect distinct credit upon yourself, the people of [location], and the nation of Iraq. Our Country Not Ourselves!<sup>9</sup>

## **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 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

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<sup>8</sup> Tr. at 58-59, 138; AE B-K, P-R.

<sup>9</sup> AE B.

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.

## **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 parents, two brothers, a former father-in-law, and a former sister-in-law 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 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.

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 2000, and she has been a U.S. citizen since 2007. Her children and ex-husband are U.S. citizens. Her parents and one brother are seeking immigration visas to enter the United States. However, they still reside in Iraq. Iraq has continuing human rights and terrorist concerns. Because of the nature of the Iraqi government and the terrorist concerns, I am unable to find AG ¶ 8(a) applicable.

Applicant served the Iraqi mission at two different times since 2005. She served in a combat zone and has been subject to mortar, missile attacks, and IED detonations because she believes in the mission. She made a significant contribution to the war effort. She was trusted by military commanders to translate vital information and provide invaluable cultural insight. She has not visited any family members living in Iraq since 2005. She does not communicate with her overseas family members while she is in Iraq. She credibly testified that she would report any attempt to coerce her to reveal classified information. 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.<sup>10</sup> 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 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.

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<sup>10</sup> ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).



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 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."<sup>11</sup> 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. 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.

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 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."<sup>12</sup> Iraq has human rights and terrorism issues. The complicated state of affairs in Iraq 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.

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<sup>11</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>12</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

### **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.c:                      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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge