



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



In the matter of: )  
)  
) ISCR Case No. 10-00734  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro se*

April 8, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

On October 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 21, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 15, 2010. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 22, 2010. He answered the

FORM on December 24, 2010. He did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to the documents in Applicant's response, and they are admitted as exhibits (AE) A through D. The case was assigned to me on January 11, 2011.

## **Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about Iraq and Iran. Applicant did not object to the request, and it was approved. The request and the attached documents were not admitted into evidence but were included in the record as attachments to the FORM. On my own motion, I have taken administrative notice of facts about elections in Iraq in 2005. The facts were obtained from U.S. Department of Defense, U.S. Department of State, and other web sites.<sup>1</sup> Copies of pages from the web pages are included in the record as Appellate Exhibit (AE) I. The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

### **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 before the war. 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.

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<sup>1</sup> See [www.defense.gov/home/features/2005/iraquelections/](http://www.defense.gov/home/features/2005/iraquelections/); [www.defendamerica.mil/archive/2005-01/fact\\_sheet.pdf](http://www.defendamerica.mil/archive/2005-01/fact_sheet.pdf); [www.defendamerica.mil/specials/2005/IraqElection/index.html](http://www.defendamerica.mil/specials/2005/IraqElection/index.html); <http://fpc.state.gov/documents/organization/50254.pdf>; [www.zindamagazine.com/Iraq05elect/elect05\\_FQ.htm#AmIEligible](http://www.zindamagazine.com/Iraq05elect/elect05_FQ.htm#AmIEligible); [www.iraqocv.org/](http://www.iraqocv.org/).

Free elections were held on January 30, 2005, to elect a 275-member Transitional National Assembly, which would serve as Iraq's national legislature for a transition period. Eligibility to vote was not limited to Iraqi citizens or dual citizens. To be eligible to vote, one must have been an Iraqi citizen, entitled to reclaim Iraqi citizenship, or born to an Iraqi father. Eligible voters could vote in Iraq or in 14 other countries. Polling stations were set up in Chicago, Detroit, Los Angeles, Nashville, and Washington.

The Constitution in Iraq was ratified on October 15, 2005. After additional free elections in December 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 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.

## Iran

Iran is a constitutional Islamic republic with a theocratic system of government in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran is 98% Muslim; the remaining 2% is everything else. The United States has not had diplomatic relations with Iran since 1980. In 2008, President Bush stated that "[t]he actions and policies of the Government of Iran are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Iran has sought to illegally obtain U.S. military equipment and other sensitive technology. The United States has defined the areas of objectionable Iranian behavior as:

- Iran's efforts to acquire nuclear weapons and other weapons of mass destruction (WMD);
- Its support for and involvement in international terrorism;
- Its support for violent opposition to the Middle East peace process; and
- Its dismal human rights record.

The U.S. has designated and characterized Iran as the world's leading state sponsor of terrorism. Iran provides critical support to non-state terrorist groups. Iran has sought to make the United States suffer political, economic, and human costs. Further, Iran has engaged in efforts to sow violence and undermine stability in Iraq and Afghanistan, including lethal support for groups that are directly responsible for hundreds of U.S. casualties.

The government of Iran has committed numerous, serious human rights abuses against the Iranian people. Abuses include political killings and incarceration; summary executions, including of minors; disappearances; religious persecution; torture; arbitrary arrest and detention, including prolonged solitary confinement; denial of due process; severe restrictions on civil liberties - speech, press, assembly, association, movement and privacy; severe restrictions on freedom of religion; official corruption; violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and child labor.

The State Department continues to warn U.S. citizens to consider carefully the risks of travel to Iran. U.S. citizens who were born in Iran and the children of Iranian citizens, even those without Iranian passports who do not consider themselves Iranian, are considered Iranian citizens by Iranian authorities, since Iran does not recognize dual citizenship. Therefore, despite the fact that these individuals hold U.S. citizenship, under Iranian law, they must enter and exit Iran on an Iranian passport, unless the Iranian government has recognized a formal renunciation or loss of Iranian citizenship. U.S.-Iranian dual nationals have been denied permission to enter/depart Iran using their U.S. passport; they even had their U.S. passports confiscated upon arrival or departure. U.S.-Iranian dual citizens have been detained and harassed by the Iranian government. Iranian security personnel may place foreign visitors under surveillance. Hotel rooms,

telephones and fax machines may be monitored, and personal possessions in hotel rooms may be searched.

## **Applicant**

Applicant is a 58-year-old employee of a defense contractor. He was born in Iraq. He attended high school in Iraq but did not graduate. He is married. His Questionnaire for National Security Positions (SF 86), submitted in 2006, does not list any children.<sup>2</sup>

Applicant's wife was born in Iraq. They married in Lebanon in 1974. She was a U.S. permanent resident when they married. He immigrated to the United States in 1974. Applicant and his wife both became U.S. citizens in 1980.<sup>3</sup>

Applicant's parents are both deceased. He had nine siblings. One of his siblings is deceased. Six of his siblings are U.S. citizens and residents. One of his siblings is an Iraqi citizen, but lives in the United States as a permanent resident.<sup>4</sup>

Applicant has a brother who is an Iraqi citizen and a resident of Iran. He is a leader of one of the minority religious groups.<sup>5</sup> He has been in Iran serving the members of his religion for several decades. Applicant talks to his brother in Iran about three times per month by telephone. Applicant and his other siblings periodically send money to his brother to help support him and the members of his religious group. Applicant's brother donates his salary to the poor.<sup>6</sup>

Applicant's father-in-law is deceased. His mother-in-law was born in Iraq. She immigrated to the United States in the early 1970s and became a U.S. citizen in the early 1990s.<sup>7</sup>

The husband of one of Applicant's sisters is an Iraqi citizen and a U.S. permanent resident. That sister is a U.S. permanent resident. Iraq held transitional elections in January 2005. Applicant's brother-in-law ran for office in the transitional government. As noted above, Iraqi citizens, former Iraqi citizens who were entitled to reclaim Iraqi citizenship, and people who were born to an Iraqi father, were authorized to vote in the elections. Eligible voters could vote in the United States. Applicant voted for his brother-in-law in the January 2005 elections. Applicant's brother-in-law served in the transitional government until Iraqi general elections were held in December 2005,

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<sup>2</sup> Item 5.

<sup>3</sup> Items 4-6.

<sup>4</sup> *Id.*

<sup>5</sup> The denomination of Applicant's brother's religion is not relevant, except that it is not the majority Muslim religion.

<sup>6</sup> Items 4-6; Applicant's response to FORM.

<sup>7</sup> Items 4-6.

and the new government assumed office in March 2006. Applicant told an investigator in September 2009 that he voted for his brother-in-law in 2003. I find the actual date was January 2005. Applicant's brother-in-law now lives in the United States as a permanent resident and works in a private business. He spends about six months a year in Iraq for his business.<sup>8</sup>

Applicant does not consider himself an Iraqi citizen. He believes he is solely a U.S. citizen. He stated that he is a loyal U.S. citizen. He stated that he "was allowed to vote because [he] was a former Iraqi citizen," and "[a]ll Iraqis by origin, who became United States citizens and permanent residents, were allowed to vote in the Iraqi elections." He does not have any assets or property in Iraq. He does not intend to ever return to Iraq to live. He stated that he could not be blackmailed or subjected to duress because of his foreign contacts and connections.<sup>9</sup>

Since December 2006, Applicant has spent a number of years in Iraq, working as a linguist for defense contractors. Applicant submitted commendatory material and letters from U.S. military and civilian personnel in Iraq.<sup>10</sup> In May 2009, a ground force commander wrote:

I give my highest recommendation for [Applicant] as a Coalition Forces Interpreter, specifically a special operations forces interpreter. [Applicant] is a superb linguist, physically capable, and dedicated to serving United States forces in the Global War on Terrorism. [Applicant] is in the top two of best interpreters out of 15 interpreters with whom I have worked in 25 months of platoon leader time.

[Applicant] served honorably for three consecutive years as a special operations interpreter, to include operating with special operations assault forces and the tactical screening facility in [location]. [Applicant] played a critical role as an Arabic linguist on combat missions of national significance, risking his life alongside the members on my platoon on 31 special operations mission[s]. Overall, [Applicant] has conducted over 900 special operations combat missions. I say again, [Applicant] has served as a special operations interpreter on over 900 special operations combat missions. He has seen more enemy contact and helped to gather more critical intelligence for the task force than any special operator or intelligence analyst in his three years of service as a task force interpreter. He has ample energy, professionalism, and motivation to locate the enemies of the Iraqi nation and the American forces. The missions conducted by my platoon and the many platoons and teams with whom [Applicant] has served would not be possible without the linguistic skills and dedication of [Applicant]. . . . [Applicant] is an American citizen of

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<sup>8</sup> Items 4-6; Applicant's response to FORM.

<sup>9</sup> *Id.*

<sup>10</sup> AE A-D.

unquestionable character who desires to help the American effort in Iraq even at the risk of his own life.<sup>11</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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

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<sup>11</sup> AE B.

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **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’s brother is an Iraqi citizen and a resident of Iran, a country that is clearly hostile to the United States.<sup>12</sup> Iran is considered the world’s leading state sponsor of terrorism; it seeks to illegally obtain U.S. military equipment, other sensitive technology, and WMD; and the government of Iran has committed numerous, serious human rights abuses against its people. Applicant’s brother-in-law was a member of Iraq’s transitional government for a period in 2005 to 2006. He is now a private businessman and a U.S. permanent resident, but he spends about six months a year in Iraq for business. Iraq has human rights issues, and it has been victimized by terrorism. Applicant’s family members’ presence in Iran 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.

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<sup>12</sup> ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).



Applicant sends money to his brother in Iran. That is evidence of Applicant's ties of affection to his brother. The security concerns raised by Applicant's brother are already alleged in SOR ¶ 1.a. There are no independent foreign influence security concerns raised by the money transfer. SOR ¶ 1.b is concluded for Applicant.

Applicant's brother-in-law's participation as a member of Iraq's transitional government is a factor to be considered under SOR ¶ 1.c. When the same conduct or facts are alleged in separate allegations under the same guideline, one allegation must be concluded for the Applicant. SOR ¶ 1.d 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 1974, and he has been a U.S. citizen since 1980. Almost all of his family members are now U.S. citizens or permanent residents. His sister's husband is an Iraqi citizen and a U.S. permanent resident. He served in the Iraqi transitional government, but he is now a businessman who spends about six months a year in Iraq for business. Applicant's brother is an Iraqi citizen and a resident of Iran. He is a leader in Iran of an international religion. Iraq and Iran have continuing 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 2006. A ground force commander wrote in May 2009 that Applicant had "served as a special operations interpreter on over 900 special operations combat missions. He has seen more enemy contact and helped to gather more critical intelligence for the task force than any special operator or intelligence analyst in his three years of service as a task force interpreter." Applicant stated that he could not be blackmailed or subjected to duress because of his foreign contacts and connections. The Appeal Board has stated that such statements, standing alone, are 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>13</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 provided extraordinary evidence of his compliance with security requirements in dangerous, high-risk circumstances during his combat services in Iraq, and he has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

### **Guideline C, Foreign Preference**

The security concern for foreign preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(7) voting in a foreign election.

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<sup>13</sup> ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

Applicant became a U.S. citizen in 1980. He voted in the Iraqi elections for the transitional government in January 2005. Eligibility to vote in an election is usually restricted to citizens of the country where the election is held. AG ¶ 10(a)(7) is applicable.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. Three are potentially applicable:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship; and
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant does not consider himself an Iraqi citizen. He believes he is solely a U.S. citizen. He stated that he is a loyal U.S. citizen who "was allowed to vote because [he] was a former Iraqi citizen," and "[a]ll Iraqis by origin, who became United States citizens and permanent residents, were allowed to vote in the Iraqi elections." Applicant did not have to be an Iraqi citizen to vote in the election. He would also be eligible to vote as a former Iraqi citizen who was entitled to reclaim Iraqi citizenship, or as someone who was born to an Iraqi father. There is no evidence that Applicant formally renounced his Iraqi citizenship when he became a U.S. citizen. What is clear is that Applicant no longer believed he was an Iraqi citizen. He did not believe he was exercising a right, privilege, or obligation of foreign citizenship when he voted in the Iraqi election; and, because one did not have to be an Iraqi citizen to vote in the election, he may be correct. Applicant likely does not feel an obligation to express a willingness to renounce dual citizenship, because he does not consider himself a dual citizen. It is a reasonable assumption that one, who did not consider himself an Iraqi citizen and had no desire to be an Iraqi citizen, would be willing to renounce that citizenship. AG ¶¶ 11(a) and 11(b) are partially applicable.

The United States Government did not officially encourage Applicant or any other eligible voter to vote in the Iraqi elections; however, clearly the United States made it easy for Applicant to do so. There were polling stations in five U.S. cities. It is not a normal event for the U.S. Government to arrange locations inside the United States for foreign elections. An Iraqi expatriate in the United States may well have believed that the actions of the United States were a form of encouragement to vote in the election. AG ¶ 11(f) is partially applicable.

### **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 the 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 Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, 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>14</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. I have also considered the totality of Applicant's family ties to Iran, 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.

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He stated that he could not be

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<sup>14</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

blackmailed or subjected to duress because of his foreign contacts and connections. 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>15</sup> Iraq and Iran 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 his foreign family members do not pose an unacceptable security risk. He has met that burden. I also find that his devotion to the United States, as evidenced by his participation in more than 900 special operations combat missions, mitigates any concerns raised by his foreign contacts and his voting in the 2005 Iraqi elections.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence and foreign preference 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.d:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge

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<sup>15</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).