



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



In the matter of: )  
)  
) ISCR Case No. 10-03477  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

June 4, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated foreign influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 22, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 20, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2011. DOHA issued a notice of hearing on March 28, 2011, and the hearing was convened as

scheduled on April 19, 2011. DOHA received the hearing transcript (Tr.) on April 27, 2011.

## **Evidentiary Rulings**

### **Evidence**

The Government offered Exhibits (GE) 1 through 6, which were received without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open until May 6, 2011, for Applicant to submit additional information. Applicant did not submit any documentary evidence before the record closed.

### **Request for Administrative Notice**

Department Counsel submitted written requests that I take administrative notice of certain facts about Iraq and Iran. 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.

## **Findings of Fact**

Applicant is 31 years old. He is applying for a security clearance so that he can return to work as a linguist for a defense contractor. He has an associate's degree. He has never been married and has no children.<sup>1</sup>

Applicant was born in Iraq. His family moved to Iran when he was a young child. They did not become Iranian citizens; they remained citizens of Iraq. When he was a young man, Applicant fled Iran under remarkable circumstances. He lived as a refugee until he was accepted for immigration to the United States in the early 2000s. He became a U.S. citizen in 2008.<sup>2</sup>

Applicant's father and three brothers returned to Iraq after the U.S.-led invasion of Iraq and removal of the Saddam Hussein government. Applicant's mother, three brothers, and sister remained in Iran. Applicant's father returns to Iran about every three to four months to visit his family. His visits usually last about a month.<sup>3</sup>

Applicant visited his family in Iraq in 2006 and 2008. He worked in Iraq as a linguist for defense contractors for 17 months from 2009 to 2010. He did not tell his family that he was working in Iraq. When he called them, he would call through the United States, so that it appeared that he was calling from the United States. He

---

<sup>1</sup> Tr. at 11, 34-36; GE 1-6.

<sup>2</sup> Tr. at 11, 18-20, 23-26, 34; Applicant's response to SOR; GE 1-6.

<sup>3</sup> Tr. at 21-23, 36-42; Applicant's response to SOR; GE 1-6.

admitted that his family would be in danger if it was discovered that he was working in Iraq for the United States. None of Applicant's family members have any association with the Iraqi or Iranian governments. Applicant stated that he would report to security authorities any attempt to use his family against him.<sup>4</sup>

Applicant does not own any foreign assets. He has no immediate family in the United States. He greatly appreciates the freedom, rights, privileges, and opportunities provided him by the United States. This country is his home, and he has no intention to move back to Iran or Iraq. At his hearing, Applicant had numerous pieces of commendatory material from his time serving in Iraq. He did not present them as evidence because he only brought the originals. He served under hazardous conditions, and he was highly regarded by the U.S. military personnel with whom he served.<sup>5</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 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. 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.

---

<sup>4</sup> Tr. at 26-32, 37-43; Applicant's response to SOR; GE 1-6.

<sup>5</sup> Tr. at 29-34, 44; Applicant's response to SOR; GE 1-6.

Despite the elections and new government, Baghdad, Mosul, and several other areas have 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. 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 United States 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.

### **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 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 mother, three brothers, and sister are Iraqi citizens residing in Iran, a country that is clearly hostile to the United States.<sup>6</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

---

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

numerous, serious human rights abuses against its people. Applicant's father and three other brothers are Iraqi citizens and residents. 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.

Applicant traveled to Iraq in 2006 and 2008 to visit family members. That has no independent security significance beyond that raised by his family's presence in that country.<sup>7</sup> SOR ¶ 1.c 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's parents and seven siblings live in either Iran or Iraq. Because of the nature of those governments and the terrorist concerns, I am unable to find AG ¶ 8(a) applicable.

Applicant has lived in the United States since the early 2000s, and he has been a U.S. citizen since 2008. He worked with U.S. forces in Iraq for 17 months in 2009 and 2010. He did not reveal to his family that he was in Iraq because he was concerned for their safety if it was discovered that he was working with the U.S. military. He stated that he would report to security authorities any attempt to use his family against him. 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 made a significant contribution to the national security.<sup>8</sup> I find Applicant provided evidence of his compliance with security requirements in dangerous, high-risk circumstances during his combat services in Iraq. Notwithstanding, the risks in this case are significant. AG ¶ 2(b) requires that "[a]ny doubt concerning

---

<sup>7</sup> See ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005).

<sup>8</sup> ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

personnel being considered for access to classified information will be resolved in favor of national security.” Applicant is clearly a loyal U.S. citizen with no allegiance to the governments of Iraq or Iran. However, because of his close family ties to those countries, I am unable to find any of the mitigating conditions to be fully 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 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 extraordinary journey to this country and his service in Iraq. I also considered the totality of Applicant’s family ties to Iraq and his ties to Iran, a country that is clearly hostile to the United States. An applicant carries a heavy burden when he 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 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 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>9</sup> I give considerable weight to Applicant's service in Iraq. However, Applicant admitted that his family would be in danger if it was discovered that he was working in Iraq for the United States. 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. Through no fault of his own, he has not met that burden. Applicant is obviously an intelligent, honest, trustworthy, and loyal U.S. citizen. Unfortunately, he was unable to mitigate the considerable security concerns raised by his family in Iraq and Iran.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Edward W. Loughran  
Administrative Judge

---

<sup>9</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).