



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



In the matter of:)
)
) ICSR Case No. 10-05182
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard T. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

August 16, 2011

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant mitigated security concerns for foreign influence.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 10, 2008, for his employment with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated November 1, 2010, to Applicant detailing security concerns for foreign influence under Guideline B. The action was taken under Executive Order 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 10, 2010. He admitted the nine factual allegations under Guideline B, and requested a hearing on the record. Department Counsel timely requested a hearing before an administrative judge. (Hearing Exhibit I) Department Counsel was prepared to proceed on March 22, 2011, and the case was assigned to me on April 4, 2011. DOHA issued a Notice of Hearing on April 21, 2011, for a hearing on May 10, 2011. I convened the hearing as scheduled. The Government offered three exhibits, which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 3. Applicant testified on his behalf. DOHA received the transcript (Tr.) of the hearing on May 25, 2011.

Procedural Issues

Department Counsel requested that administrative notice be taken of certain facts concerning Iraq (Hearing Exhibit II). I have considered the request and the documents provided by Department Counsel. Administrative notice is taken of the facts pertaining to Iraq as noted below in the Findings of Fact.

Applicant received the Notice of Hearing a few days before the hearing. He discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on April 21, 2011. Applicant is entitled to 15 days advance notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on May 10, 2011, and he had sufficient time to prepare. He waived the 15-day notice requirement. (Tr. 5-6)

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all of the factual allegations raised in the SOR.

Applicant is 39 years old and a chemist for a pharmaceutical company. He has applied for employment with a defense contractor as an interpreter and role player. Applicant is seeking a security clearance so he can work with and train members of the United States armed forces in the language and culture of his former country. He is required to be eligible for access to classified information to assume this position. Applicant is married with three children. His wife has been granted eligibility for access to classified information. (Tr. 11-16)

Applicant was a 19-year-old high school student living in Iraq during the first gulf war in 1991. He participated in protests against Saddam Hussein. After Hussein resumed control over Iraq, Applicant was forced to flee to a refugee camp in Saudi Arabia. He woke his father one morning to tell him he was fleeing. He left alone without his family to escape retribution and possible death from the Saddam Hussein Government. He spent two years in the refugee camp before he was sent in 1993 by the United Nations to live in the United States under the auspices of a relief

organization. After arriving in the United States, he learned to speak and write English. He earned an associate's degree at a community college before studying at a United States university. He received a bachelor's degree in chemistry in 1999. While a student, he lived with other Iraqi refugees who all supported themselves by working jobs that enabled them to attend school during the day. He paid for his schooling and had no tuition debt. He became a United States citizen in 1998 at the first opportunity. Applicant never had an Iraqi passport since he left the country and came to the United States on a refugee visa. He received a United States passport in 1999 after becoming a citizen. (Tr. 16-24, 39-41)

Applicant admits his father and step-mother are residents and citizens of Iraq. He also has a brother, seven sisters, and a half-sister who are citizens and residents of Iraq. His mother died in 1994. He did not return to Iraq for her funeral. His father is an unemployed taxi bus driver still living in the same family house he grew up in. His brother is a 25-year-old construction worker who wants to immigrate to the United States and Applicant has sponsored him for a visa. He has eight sisters ranging in age from 22 to 40. His family lives in close proximity in a large city in southern Iraq. When he left Iraq, he considered his family close but he does not know how close they are now. All are married except his youngest sister. He has only met the husband of his oldest sister who married before he fled Iraq. He has not attended any of his other sisters' weddings. He has only spoken to one of the husbands once or twice. He rarely speaks to his sisters and may contact them occasionally by telephone during holidays. He exchanges e-mails concerning the family with one sister about twice a year. He met his father, brother, and youngest sister in Jordan in 2002. (Tr. 41-47)

Applicant lived half of his life in Iraq and half in the United States. He fled Iraq because he feared the Hussein government. Applicant has great appreciation for the United States. He was given a new life in the United States, received a college education, got married, and has his family here. All of his financial resources are in the United States and he has been able to purchase some rental properties. He has not visited Iraq since he left in 1991 because he knows he will not be safe there. He feels the present Iraqi government is weak and corrupt. He has no allegiance to the Iraqi government. (Tr. 47-49)

When Applicant was in his final year at the university, his oldest sister in Iraq sent him a letter which introduced him to a girl who was a citizen and resident of Iraq. Following the Iraq culture, the two became engaged and he applied for a fiancée visa for her to come to the United States. It was important for Applicant to marry within his culture. Applicant's wife came to the United States in 1999, and they were married 90 days later. Applicant's wife became a United States citizen in 2005. She has been employed by a Department of Defense contractor since 2006 as a language instructor. She has been granted eligibility for access to classified information. (Tr. 22-36)

Applicant admits his mother-in-law and father-in-law are citizens of Iraq residing in the United States. He also admits three brothers-in-law and a sister-in-law are citizens of Iraq residing in the United States. He admits he has a sister-in-law who is a citizen and resident of Iraq. Applicant's wife and her family were from the same area of

Iraq as his family. Since his marriage, most of Applicant's wife's family has immigrated to the United States. When his wife was pregnant with their first daughter, her parents applied for and were granted a visitor's visa in 2001. They are now permanent residents with green cards. His father-in-law was an engineer in an oil refinery and his mother-in-law was a statistician for a company. They retired from their positions in Iraq and their property in Iraq was taken from them when they came to the United States. They worked here for a short time after they arrived but they are not now employed. One of his brothers-in-law has married a woman of Iraqi decent and lives in another U.S. state. His other two brothers-in-law and his sister-in-law are in their twenties and live with their parents. His one sister-in-law in Iraq is married with children. He has not met or talked to her. (Tr. 29-33, 49-51)

Iraq is a country about the size of California with a population of approximately 30 million. Iraq received independence from British administration in 1932. It was ruled by dictatorships under the Ba'ath party from 1958. From July 1979 until March 2003, Iraq was ruled by Saddam Hussein and the Ba'ath party. Iraq invaded Kuwait in August 1990. A United States-led coalition expelled Iraqi forces from Kuwait in February 1991. There were rebellions by Muslim groups against the government which were brutally and quickly crushed by the Hussein government. The Hussein regime refused to comply with United Nations mandates. In March and April 2003, a United States-led coalition removed the Ba'ath party, leading to the overthrow of Saddam Hussein.

In March 2006, Iraq's new government took office after being freely elected by the Iraqi people. Terrorism committed by illegally armed groups receiving weapons and training from Iran continues to endanger the security and stability of Iraq. Foreign terrorists continue to flow into Iraq, predominantly through Syria. Al-Qaeda in Iraq still possesses the means to launch high-profile attacks against Iraqi civilians and infrastructure. The U. S. Department of State still warns its citizens of the inherent dangers of travel in Iraq and recommend against all but essential travel. Despite Iraqi security forces' efforts, numerous insurgent groups remain active throughout Iraq. Attacks against military and civilian targets continue including the international zone and northern Iraq. Attacks include improvised explosive devices, mortars, rockets, and shooting. Such attacks may occur at any time. There are substantiated reports of human rights abuses including arbitrary deprivation of life, disappearances, torture, and other cruel, inhuman, and degrading treatment and punishment. The government's effectiveness in adhering to the rule of law is hampered by violence. Treatment of detainees under government authority has generally been poor. The judiciary is weak and not independent.

Policy

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

Analysis

Guideline B: Foreign Influence

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 the 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 consideration 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. (AG ¶ 6)

All of Applicant's family members are citizens and residents of Iraq. Applicant's wife's family except one sister and her family are citizens of Iraq but reside in the United States. Applicant fled Iraq as a refugee when he was a teenager in 1991 and has not returned. His wife left in 1998 to marry Applicant in the United States. They are both

United States citizens. Applicant has limited contact with his family by telephone and e-mail. He saw some of his relatives one time in another country since he left Iraq. He has only met one of his seven brothers-in-law. He does not own property in Iraq. No matter how limited and infrequent, contacts and relationships in Iraq are a security concern and raise Foreign Influence Disqualifying Conditions AG ¶ 7(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); AG ¶ 7(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); and AG ¶ 7(d) (sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion).

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. One factor that heightens the risk in Applicant's case is the conditions in Iraq caused by an insurgency, violence, terrorism, and an unstable government.

Applicant raised facts to mitigate the security concerns arising from his family in Iraq. I have considered Foreign Influence Mitigating Conditions (FI MC) AG ¶ 8(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.); AG ¶ 8(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); and AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

The family members in Iraq place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Except for seeing his father, brother, and sister in another country in 2002, Applicant has not seen his family since he fled Iraq in 1991. Prior to fleeing Iraq, his family was close. The family members remaining in Iraq are still have a close relationship since they reside in close proximity to each other. Applicant contacts certain family members by phone and e-mail. While the contact is not frequent, the mere existence of the contacts under the circumstances shows that the family relationships are still close and not casual.

Applicant fled Iraq fearing for his life because he protested against the government. He has not returned in over 20 years and he still fears for his life if he returns to Iraq. He did not return for his mother's funeral and has not seen most of his family since he fled the country. He has no allegiance or sense of loyalty to the government of Iraq. Any feelings for Iraq are based on culture and heritage and not from a sense of loyalty to the government. He came to the United States as a refugee and developed such a profound sense of obligation to the United States that he now wants to assist in training members of the United States military. His immediate family, his wife, his daughter, and his wife's family, are here in the United States. His wife's family left property behind in Iraq to come to the United States. Applicant can be expected to resolve any conflict of interest in favor of the United States because of this strong sense of loyalty to the United States. Applicant's family members in Iraq will not place him in a position to choose between them and the interests of the United States. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States, the circumstances of his departure from Iraq, his feelings against the Iraqi government, and the minimal contact with his family are such that he can be expected to resolve any conflict of interest in favor of the United States interest. Accordingly, FI MC AG ¶ 8(a), FI MC AG ¶ 8(b), and FI MC AG ¶ 8(c) apply. Applicant has met his heavy burden to show that his family in Iraq, and his family members who are citizens of Iraq but residing in the United States, do not cause a security concern. I conclude Applicant has mitigated security concerns for foreign influence.

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 access to sensitive information 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 carefully considered all of the circumstances discussed above in regard to disqualifying and mitigating conditions as well as the following factors in light of the whole person concept. I considered that Applicant fled Iraq because he protested against the government and feared for his life.

He became a United States citizen, raised his family, and became a productive member of our society. He has minimal contacts with his family in Iraq. The whole-person concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a determination concerning Applicant's eligibility for access to classified information. Applicant's family members in Iraq might be sufficient to raise security concerns for Applicant's potential vulnerability to coercion, exploitation, or pressure. However, Applicant has established his strong loyalties to the United States. He also established he has no loyalty or allegiance to Iraq. He fled that country as a refugee never to return. Applicant's strong loyalty and allegiance to the United States, his strong feelings against the Iraqi government, and his lack of allegiance to Iraq counters any contacts and relationships he has with his family members in Iraq.

Overall, on balance, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has met the heavy burden of mitigating all potential security concerns arising from his family in Iraq and his wife's family who reside in the United States. Applicant has mitigated the security concerns arising from foreign influence, and is granted access to classified information.

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
Subparagraph 1.a – 1.i:	For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge