



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



In the matter of:)
)
) ICSR Case No. 10-05493
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard T. Stevens, Esquire, Department Counsel
For Applicant: Mariea Salhi, Personal Representative

September 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 29, 2008, for his employment as an interpreter/role player with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued interrogatories 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 interrogatories, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated November 17, 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 acknowledged receipt of the SOR on January 25, 2011.

Applicant answered the SOR on January 25, 2011. He admitted the factual allegation under Guideline B, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 19, 2011, and the case was assigned to me on May 19, 2011. DOHA issued a Notice of Hearing on June 9, 2011, for a hearing on June 21, 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. Applicant offered one document that I marked and admitted to the record without objection as Applicant Exhibit (App. Ex.) A. DOHA received the transcript (Tr.) of the hearing on June 28, 2011.

Procedural Issues

Department Counsel requested that administrative notice be taken of certain facts concerning Iraq (Hearing Exhibit I). 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 on or about June 15, 2011. He discussed the hearing date with Department Counsel on May 3, 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 June 21, 2011, and he had sufficient time to prepare. He waived the 15-day notice requirement. (Tr. 5-7)

Findings of Fact

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

Applicant is 43 years old and employed by a defense contractor as an interpreter/role player in support of training for United States forces. He was born and raised in the Kurdish area of Iraq. His parents and one sibling are deceased. He has three brothers and two sisters that are citizens of Iraq residing in the Kurdish area of Iraq. He has three other brothers who left Iraq and are residents of European countries. Applicant came to the United States as a refugee in 1992, and became a United States citizen in 2004. He is married with two children. His wife was born in the Kurdish area of Iraq and immigrated with her family to the United States in 1992. She became a United States citizen in 2004. Applicant has served as an interpreter/role player in the continental United States since 2008 supporting the training of United States military personnel. He submitted an application for a security clearance to continue to serve as a trainer of United States military personnel. (Tr. 10-13, 17-18, 21-22; Gov. Ex. 1, e-QIP, dated October 3, 2008)

Applicant and his family were native Kurdish people who lived in the northern region of Iraq. When Applicant was 18 years old in 1985, he was not in school so he was required by Iraqi law to enter the Iraqi armed forces. He was forced to serve because his family would have been tortured or killed if he did not serve. He served for about two months completing some part of basic training when he decided to desert. He went back to his home area and lived in his old neighborhood. If Applicant had been located and identified as a deserter, he would have been killed by the Iraqi authorities. He found employment at night in a bakery and developed an Egyptian accent to elude authorities. His neighbors could be tortured by the Iraqi Government if he was found in the area. There was pressure from his neighbors to return to the Iraqi military. Saddam Hussein issued an amnesty for deserters to return to the military. He returned to the Army 1990. When Iraq invaded Kuwait in 1990, Applicant did not want to fight for Iraq so he deserted again in 1990 and crossed the border into Saudi Arabia. His family initially did not know that he was alive and believed that he died in Kuwait. They even had a funeral for him. (Tr. 17-19, 22-25; Gov. Ex. 3, Affidavit, dated August 18, 2009)

Applicant spent over two years in a refugee camp in Saudi Arabia before coming to the United States. After immigrating to the United States as a refugee in 1992, Applicant was settled by a church group in the south. He found employment as a cook in a resort. He held that position for over four years when he was laid off in a restructuring. He then worked at an optical company for over five years until that company bankrupted and closed. In 2008, he was hired by a company to be an interpreter, role player, and cultural and religious advisor for United States military personnel. He has worked at various military locations in the United States. He received many certificates of appreciation for his work. (Tr. 30-36; App. Ex. A, Certificates, various dates)

All of Applicant's siblings in Iraq live in the Kurdish area of Iraq where they were born and raised. He contacted them after he immigrated to the United States to tell them he was alive. Applicant's oldest sister is a pharmacist and a citizen and resident of Iraq. She is nine years older than Applicant and raised him because his mother was sick. She is single and lives with his brother. Another sister is a teacher who is married to a teacher. Both are citizens and residents of Iraq. His oldest brother is now disabled from a gunshot wound. His wife is a clerk in a store. They are both citizens and residents of Iraq. His other two brothers are plumbers. They and their wives are citizens and residents of Iraq. He talks to his siblings very infrequently. He may call them on religious holidays about once a year. He has not spoken to them in over two years. (Tr. 25-29, 38-40)

Applicant only returned to Iraq one time since he left in 1990. He returned in 1996 when his father died. His sister notified him that his father was sick and wanted to see him before he died. Applicant and his wife flew to Turkey using their United States green cards. It took them over 20 days to enter the Kurdish area of Iraq by land. He was not concerned about entering the Kurdish area because the Kurds were autonomous and in charge. He and his wife did not have to be concerned about being confronted by the Hussein Government. (Tr. 29-31, 36-38)

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 since 1958. From July 1979 until March 2003, Iraq was ruled by Saddam Hussein and the Ba'ath party. The Kurdish region of Iraq is in northern Iraq and also extends into Turkey, Iran and Syria. In this area, the Kurds form a prominent majority population, and Kurdish culture, language, and national identity have been historically based. The Iraqi Kurds gained autonomy in a 1970 agreement with the Iraqi government and its status was re-confirmed as an autonomous entity within the federal Iraqi republic in 2005. Today the Kurds are approximately 17% of the Iraqi population, but are the majority in the north provinces of Iraq. While most Kurds are Sunni Muslims, they differ from other Arabs in language and custom.

Iraq invaded Kuwait in August 1990. A United States-led coalition expelled Iraqi forces from Kuwait in February 1991. After the war, the Kurds in the north and the Shi'a Muslims in the south rebelled against the Hussein government. These rebellions were brutally and quickly crushed by the Hussein government. To protect the population, the United States, United Kingdom, and France enforced a no-fly zone in the north and south of Iraq to protect the people. The "safe haven" established by the United Nations Security Council assisted the Kurds to survive. The Hussein government under a United Nations resolution was to surrender their weapons of mass destruction (WMD). 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. When the coalition invaded Iraq in 2003, the Kurdish people welcomed the troops with celebrations and dancing in the streets. Since then, the Kurds have controlled the area of Kirkuk and Mosel.

In March 2006, Iraq's new government took office after being freely elected by the Iraqi people. The Kurdish area remained autonomous and did not participate in the formation of the new Iraqi government. 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. However, the Kurdish area is relatively safe and has not experienced terrorist attacks. The U. S. Department of State still warns its citizens of the inherent dangers of travel in Iraq and recommends 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)

Applicant left Iraq in 1990 as a military deserter rather than serve in the Saddam Hussein army against coalition forces. He was settled in the United States by a religious group. He has three brothers and two sisters who are citizens and residents of the Kurdish region of Iraq. Applicant returned to Iraq only once in 1996 for his father's funeral. Since he left Iraq, he has only seen his siblings that one time. He talks to them occasionally by phone, usually on religious holidays. The last contact with his siblings was over two years ago. 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), and 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).

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 the contacts with his family members 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).

Applicant's siblings in Iraq place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant has had little contact with his siblings since he fled Iraq in 1990. He only saw them once in 1996 for his father's funeral. He has infrequent telephone conversations with them usually only on religious holidays. His last contact with them was over two years ago. While the contacts are

minimal, the mere existence of the contacts under the circumstances must be considered close and not casual.

Applicant fled Iraq rather than serve in the Iraqi army fighting against coalition forces for Saddam Hussein. He has five siblings still living in the Kurdish area of Iraq that he has seen only once in over 20 years and talks to infrequently by telephone. He has no allegiance or sense of loyalty to the government of Iraq. He is an ethnic Kurd. The Kurds are autonomous from the Iraqi government. The Kurds have rebelled against Iraq and have worked with and been faithful to the United States-led coalition forces. He has a sense of loyalty to his Kurdish culture but not to the government of Iraq. He came to the United States as a refugee and developed such a profound sense of obligation to the United States that he has served as a trainer of United States military personnel for almost four years. He has received certificates of appreciation for his work with the armed forces. He is seeking a security clearance to continue his work as a trainer.

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 in Iraq are such that he can be expected to resolve any conflict of interest in favor of the United States interest. Accordingly, AG ¶ 8(a) and AG ¶ 8(b) apply. Applicant has met his heavy burden to show that his family members in Iraq 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 rather than serve in the Iraqi army under Saddam Hussein against coalition forces. He became a United States citizen and a productive member of our society. He has served for almost four years training military personnel. The military members he worked with have praised him for his work with them. He has minimal contacts with his limited 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. Applicant has established his strong connection and loyalties to the United States by his willingness to serve as a trainer with United States forces. He established he has no loyalty or allegiance to Iraq. He fled that country as a refugee rather than serve a dictator and tyrant under threat of death. 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 members in Iraq. Applicant mitigated the security concerns for 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: 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