



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-05755  
)  
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Applicant for Security Clearance )

**Appearances**

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

December 1, 2011

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has mitigated the Foreign Influence security concerns raised by his relatives in Iraq, Malaysia, and Tunisia and his property in Iraq. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 14, 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) effective after September 1, 2006.

Applicant answered the SOR on October 27, 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 May 27, 2011. A complete copy of the file of relevant

material (FORM) was received by Applicant on July 16, 2011, which included nine exhibits (GE), marked GE 1 through GE 9 and administrative notice materials on Iraq, Tunisia, and Malaysia. Applicant was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. By August 15, 2011, Applicant had not responded. The case was assigned to me on October 5, 2011.

### **Findings of Fact**

Applicant is a 52-year-old employee of a government contractor. He was born in Iraq and immigrated to the United States over 30 years ago. He became a U.S. citizen in 1986. He attended college in the United States and earned an associate's degree in 2001. He was hired as a linguist in 2004 and served in Iraq through 2009, when he was laid off pending the outcome of this security clearance adjudication. He is married and has five children, who are all citizens of the United States and reside in the United States. (GE 4; GE 5; GE 9.)

Applicant's parents are both deceased. Applicant had seven siblings, including two brothers and five sisters. They are as follows. (GE 5; GE 9.)

Applicant's youngest brother was captured and held captive by Iraqi militia in September 2006 due to his affiliation with the U.S. forces. Ultimately, his brother was executed. Applicant explained, "During the security decline [in Iraq]; my brother (God bless his soul) worked in support of the U.S. troops in Iraq from 2003 until his death in 2006. His family, his wife and three kids have applied for the refugee program to come to the U.S." His brother's wife and children currently reside in Baghdad in a home formerly owned by Applicant's father. When Applicant's father passed on, each of his children inherited shares of the home. Applicant's share was worth approximately \$50,000. Applicant donated his share of the house in Baghdad to his deceased brother's wife and children. (GEs 4-9.)

Applicant's oldest brother is a citizen of Iraq, residing in the United States. He immigrated with his family to the United States as part of the Iraqi refugee program. Before immigrating to the United States, Applicant's brother worked as a U.S. government contractor in Iraq. His wife, Applicant's sister-in-law, was employed from 1996 to 2002 as a draftsman with the government of Iraq. (GE 6; GE 9.)

Two of Applicant's sisters reside in Iraq. One is a homemaker and is married to a lawyer. The other is an art teacher who is married to another art teacher. Applicant had no contact with either of his sisters in Iraq from September 2006 through 2008. He did not contact his sisters during that period because he feared the militia may have wire-tapped their phone lines and did not want to place them or their families in jeopardy. He now calls them, "once in a while." (GE 6; GE 9.)

Of Applicant's three remaining sisters: one sister is an Iraqi citizen, who resides in Malaysia; one is a citizen of Iraq residing in England; and one is a citizen of Iraq residing in the United States. All fled with their husbands to escape persecution under

Saddam Hussein and the subsequent violence in Iraq. The sister in Malaysia has refugee status there and Applicant has applied to bring her to the United States. (GE 4; GE 6; GE 9.)

Applicant has a cousin who is a citizen and resident in Iraq. He also has a friend who he was once close to, who is a citizen and resident in Iraq. Applicant has not spoken to either his cousin or friend, "for more than a year." (GE 4.)

Applicant's wife was born in Tunisia and is a naturalized U.S. citizen. She maintains dual citizenship with Tunisia. Her parents, Applicant's mother-in-law and father-in-law, were both citizens and residents of Tunisia at the time of Applicant's security interview. However, Applicant's father-in-law passed away in August 2009. His mother-in-law now resides in the United States with one of her daughters. (GE 4; GE 6; GE 9.)

## **Iraq**

In 2003, a U.S.-led coalition removed Saddam Hussein and his Ba'athist regime from power. In March 2006, Iraq's new government took office after being freely elected by the Iraqi people. However, terrorism committed by illegal armed groups receiving weapons and training from Iran continues to endanger the security and stability of Iraq. Foreign terrorists from North Africa and other Middle Eastern countries continue to flow into Iraq, predominantly through Syria. Al-Qaeda in Iraq (AQI) still possesses the means to launch high-profile attacks against Iraqi civilians and infrastructure. As a result, the Department of State continues to warn U.S. citizens of the dangers inherent in traveling to Iraq and recommends against all but essential travel to the country given the dangerous security situation. Despite Iraqi Security Forces' efforts, numerous insurgent groups remain active throughout Iraq. In addition, sectarian violence often occurs in Iraq. U.S. citizens in Iraq are at risk for kidnappings, with the most recent kidnapping of an American citizen reported in January 2010. Hostages are often killed.

## **Malaysia**

The Department of State remains concerned about the possibility of terrorist attacks against U.S. citizens in Southeast Asia. Jemaah Islamiyah (JI), which has been designated as a Foreign Terrorist Organization by the U.S. Government, has a known presence in Malaysia and is linked to al-Qaeda. Another Foreign Terrorist Organization, Abu Sayyaf Group (ASG), has kidnapped U.S. citizens in parts of Malaysia and retains capability to conduct operations in those regions. The group currently engages in kidnappings for ransom, bombings, assassinations, and extortion, and has ties to JI.

## **Tunisia**

In January 2011 the President of Tunisia fled the country after wide-spread protests. Tunisia then experienced a period of instability. Presidential elections were expected.

Tunisia has open borders with its neighbors Algeria and Libya. Al-Qaida in the Land of the Islamic Maghreb (AQIM), which has been designated as a Foreign Terrorist Organization by the U.S. Government, is present in North Africa. AQIM claimed responsibility for the kidnapping of two Austrian tourists on the Algerian-Tunisian border in 2008.

American citizens of Tunisian origin are expected to enter and exit Tunisia on their Tunisian passports. If a Tunisian-American succeeds in entering using a U.S. passport, he or she will still have to present a Tunisian passport to exit the country.

## **Policies**

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 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 protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to 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 the Foreign Influence guideline is set out in AG ¶ 7:

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 nine conditions that could raise security concerns under AG ¶ 7. Four 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;
- (b) connections to a foreign person, group, or 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;
- (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; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's family members and friends are citizens of and/or reside in several foreign nations. Of Applicant's six surviving siblings, two are U.S. residents, but still possess Iraqi citizenship, two are citizens of and reside in Iraq, one is an Iraqi citizen residing in Malaysia, and one is an Iraqi citizen residing in England. Applicant also has a mother-in-law who possesses Tunisian citizenship, although she resides in the U.S. Applicant's father-in-law is now deceased. He has a cousin, and a friend, which also are citizens of and reside in Iraq. He inherited a share of his father's house in Iraq.

The mere possession of close ties and property in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, even if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. A conflict of interest or a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion must be established.

In the instant case, there are heightened risks and potential conflicts of interest that could cause possible inducement, manipulation, pressure, or coercion of Applicant's relatives or friends who are citizens of or reside in Iraq, Malaysia, and Tunisia. Each of these nations has active terrorist cells operating within or close to its borders. Kidnappings have been reported in each of these nations. The above disqualifying conditions apply.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, including:

(a) the nature of the relationships with foreign persons, the country in which these people 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.

With respect to Applicant's brother, sister, and mother-in-law, who now all reside in the United States, it is unlikely Applicant will be placed in a position of having to choose between the interests of these relatives and the interests of the United States. The heightened risk relating to their citizenship is mitigated by their residency in the United States and their affiliations here. AG ¶ 8(a) applies to his relatives now in the United States.

Applicant has experienced firsthand the conflict of having a relative kidnapped and held hostage in Iraq. His youngest brother, who was working for the United States



in Iraq, was taken hostage in 2006 and subsequently murdered by Iraqi militiamen. During this time, Applicant was working for the United States in Iraq, as an interpreter. Applicant's deep and longstanding relationships and loyalties in the United States drove Applicant to continue his work with the United States, despite the known risks and the death of his brother. He has been a U.S. citizen since 1986. All of Applicant's five children were born and raised in the United States. He no longer owns a share in his father's home, after donating it to his deceased brother's family. He still is in contact with his sisters, cousin, and friend in Iraq and his sister in Malaysia, but those contacts do not create a concern, given his loyalties and record of service from 2004 to 2009 in Iraq on behalf of the United States.<sup>1</sup> Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) applies.

### **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 those guidelines, but some warrant additional comment. Applicant's foreign contacts are mitigated by Applicant's actions. He has lost his youngest brother to Iraqi insurgents, yet he still has remained loyal to the United States and wishes to serve his country overseas.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Influence security concern.

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<sup>1</sup> ISCR Case No. 04-12363 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 (App. Bd. Feb. 5, 2008).

## 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
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	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.

Jennifer I. Goldstein  
Administrative Judge