



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



In the matter of:)	
)	
)	ISCR Case No. 10-05981
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

May 11, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is granted.

On December 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on January 1, 2011, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 11, 2011, and reassigned to me on March 29, 2011. DOHA issued a Notice of Hearing on April 7, 2011. Applicant requested the hearing be done by video-conference because he was in Iraq. The hearing date was coordinated to

accommodate Applicant's schedule and the site availability. I convened the hearing as requested by Applicant on April 14, 2010. Applicant was located at a military base in Iraq. I was located at the Defense Office of Hearings and Appeals headquarters, in Arlington, Virginia. The Government offered exhibits (GE) 1 through 3. Applicant did not object and they were admitted into evidence. The Government requested administrative notice be taken of Hearing Exhibit (HE) I. I granted the request without objection. Applicant testified on his own behalf. He did not offer any exhibits. The record was held open until April 18, 2011, to allow Applicant to submit additional documents, which he did, and they were marked as Appellant Exhibits (AE) A through M, and admitted into evidence without objections.¹ DOHA received the hearing transcript (Tr.) on April 22, 2011.

Findings of Fact

Applicant admitted all of the SOR allegations. They are included in the findings of facts. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old, married and has three children. He has worked for a federal contractor since February 2009. Prior to his current employment, Applicant worked for a different federal contractor in 2008.²

Applicant is of Kurdish heritage and was born in Iraq. He was obligated to join the Ba'ath party when he was in school because he had no choice under the ruling Iraqi regime. If you were not a member of the Ba'ath party you risked your safety. He was conscripted into the Iraqi army in 1989. He served for two years and shortly after the start of Operation Desert Storm in February 1991, he deserted from the army. He had no further affiliation with the Ba'ath party. No one in the Iraq military or government pursued him. He never took up arms against the United States. He was a cook in the army. He left and went to live with his family in northern Iraq, where many Kurds resided. From 1991 until 1996, he and his family were relatively safe where they lived because there was a "no fly zone" protected by the United States and other countries. His brother worked for the U.S. Army in the area. After 1996, when the "no fly zone" ended, Applicant and his family were in danger from the Sadaam Hussein regime because of his brother's ties with the U.S. military. He and his family fled Iraq and were refugees in Turkey for about two months. In September 1996, they were screened, interviewed, and then transported to the United States Territory of Guam. They remained on Guam for two months and were granted political asylum by the United States. Applicant and his family then traveled to the continental United States where they established residency.³

¹ HE II is Department Counsel's response to the Appellant Exhibits.

² Tr. 23, 76-77.

³ Tr. 23-31, 42-43.

Applicant and his wife married shortly before leaving Iraq. They have three children, ages 14, 11, and 5. Their eldest was born in Iraq. Applicant's wife, mother, and siblings also immigrated to the United States and were granted political asylum. Applicant became a naturalized citizen of the United States in 2006. His wife was naturalized in 2008. His eldest son wants to change his first name. To avoid confusion in the process, they are waiting until the change is completed before applying for citizenship for him. His two younger children were born in the United States.⁴

Applicant's father decided to remain in Iraq, even though he was permitted to seek political asylum in the United States. He had a job as a real estate broker and because of his age he remained. His mother immigrated with Applicant in 1996 and received her permanent resident status (green card) after about a year. She then decided to return to Iraq with two of her daughters. Applicant talks to his parents by telephone and has visited them on his trips to Iraq.⁵

Applicant has nine siblings. One of Applicant's brothers is a citizen and resident of Iraq. He is a lieutenant colonel in the Iraqi army. He joined the army in 1982. Applicant does not know his brother's current assignment. His brother also became a member of the Ba'ath party while in high school, because it was required by the political regime. Applicant will speak to his brother by telephone once or twice a month and occasionally by "Skype." His brother is married and has children.⁶

Applicant's second brother is a naturalized citizen of the United States. He works for the U.S. government in Iraq. He has worked there for three or four years. He is married and his wife and children are citizens and residents of the United States.⁷

Applicant's third brother is a citizen and resident of the United States. He works as an electrician and has worked for contractors in Iraq. He is married and his wife and children are citizens of the United States. A fourth brother is a permanent resident and has applied for citizenship of the United States. He has worked for military contractors in the United States. He is not married. A fifth brother is a citizen of the United States and worked for a federal contractor for a period of time in Iraq, but now is in the United States. He, his wife, and their children are citizens and residents of the United States. A sixth brother is a naturalized citizen of the United States. His wife is a permanent resident and their children were born in the United States.⁸

Applicant's sister immigrated to the United States in 1996. She obtained permanent resident status and later returned to Iraq with her mother. She married an

⁴ Tr. 31-41.

⁵ Tr. 46, 84-86.

⁶ Tr. 41-45.

⁷ Tr. 61-63.

⁸ Tr. 56-61, 63-64.

Iraqi citizen and they have two children. She and her family live in the same town in northern Iraq as her parents. Applicant stays in contact with her.⁹

A second sister of Applicant lives in the United States and is a permanent resident. She has applied to become a U.S. citizen and is waiting to be approved. Her husband is an Iraqi citizen and resides with her in the United States. Applicant believes he may have permanent resident status. He works for the Iraqi government in the United States. He is also a Kurd and came to the United States in about 2000. His sister went to Iraq and met him; they married, and she sponsored his entry into this country.¹⁰

A third sister is a naturalized citizen of the United States and her husband is an Iraqi citizen. They married about four years ago and she is sponsoring him for entry into the United States. He presently lives in Iraq. She has three children with her husband, who were born in the United States. When her husband's application is approved, he will move to the United States.¹¹

Applicant also has four aunts that live in the same town where his parents and siblings live in northern Iraq. When he is in Iraq, he visits his parents, and also other relatives that live in the same town.¹²

Applicant traveled to Iraq twice in 2001, once in 2006, and twice in 2007 to visit his family. Applicant owns a house in the United States. He has no assets in Iraq. He considers the United States his home and intends to remain here.¹³

Applicant has been deployed to Iraq for 22 months. He has been working closely with the U.S. military. He was commended by a senior military officer for his contributions and efforts in resolving a complicated mission. He also received a letter of appreciation for his contributions and hard work while working in an important area that was intricate to protection and security in Iraq. His efforts were considered the "backbone" of the process and without them the mission would have been negatively impacted. He is considered a valuable asset to the accomplishment of the mission. The letter specifically stated: "I give you a superb recommendation for all the work done here [that] is of high caliber and impeccable quality. You began your mission here at [X] in October 2009 and [continue] to be a valued asset."¹⁴

⁹ Tr. 48-52.

¹⁰ Tr. 52-56.

¹¹ Tr. 65-69.

¹² Tr. 69-72.

¹³ Tr. 45-46, 83.

¹⁴ Tr. 79-83; AE A and B.

Applicant provided copies of numerous letters of appreciation for his outstanding service in support of Operation Iraqi Freedom, other training, and exercises.¹⁵

Iraq¹⁶

In 2003 Saddam Hussein and his Ba'ath party were removed from power. A new freely elected government took office in 2006. Terrorists receiving training from Iran continued to endanger the security and stability of Iraq. Foreign terrorists continued to flow into the country and Al-Qaeda continued to be a threat.

The United States State Department continues to warn U.S. citizens of the danger of traveling in Iraq and recommends against all but essential travel due to the dangerous security situation. Numerous insurgent groups remain active throughout Iraq, despite the efforts of the Iraq security forces. The State Department warns of attacks against military and civilian targets that include roadside improvised explosive devices (IED), mortars, rockets, human and vehicle borne IEDs, and shootings. There is also the threat of sectarian violence in the country. Kidnappings continue to occur and the targets are foreigners, primarily dual American-Iraqi citizens, Iraqi citizens, and U.S. citizens.

There are reports of human rights abuses, including: misappropriation of official authority by sectarian, criminal, and insurgent groups; arbitrary deprivation of life; disappearances and torture and other cruel, inhuman or degrading treatment or punishment. The Iraqi government's effectiveness in adhering to the rule of law has been hampered by ongoing violence, corruption, sectarian bias, and the lack of civilian oversight, and accountability. The treatment of detainees under government authority has been generally poor. The judiciary is weak, and judicial independence is impaired by threats and killings by insurgent, sectarian, tribal, and criminal elements. Security threats hinder the ability of citizens to access the courts, and witness intimidation continues.

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 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, 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 ¶

¹⁵ AE C-M.

¹⁶ HE I.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 Executive Order 10865 provides that 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

AG ¶ 6 expresses the security concern regarding 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 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

(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.

AG ¶¶ 7(a) and (b) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

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."¹⁷

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security."¹⁸ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or the country is known to conduct intelligence operations against the U.S. In considering the

¹⁷ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹⁸ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.¹⁹

Applicant's parents live in Iraq. He has a brother who lives there and is an officer in the Iraqi military. He also has a sister who lives in Iraq and has permanent resident status in the United States. Her husband is a citizen and resident of Iraq. Applicant has another brother-in-law who is a citizen of Iraq, working for the Iraqi government in the United States. Applicant visits these relatives when he is in Iraq. He maintains contact by telephone with his parents. These contacts potentially could create a heightened risk of foreign influence, exploitation, inducement, manipulation, pressure or coercion because of the security concerns in Iraq. In addition, the U.S. State Department warns of the dangers for Americans in Iraq. I find the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

- (a) the nature of the relationship 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 and interests of the U.S.;
- (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 interests in favor of the U.S. interests; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Iraq is a dangerous country regardless of one's nationality. Terrorist groups are actively engaged. However, Iraq and the United States continue to work closely to reinforce its security. Except for Applicant's brother who is in the Iraqi army, his family members' positions are unlikely to place Applicant in a position of having to choose between his family and the interests of the United States. Applicant left Iraq under dire circumstances and was granted political asylum. He is now an active participant in the United States' mission in Iraq. His brother was in the army during the Hussein regime, and continues his service under the new government, which is allied with the United States. His brother-in-law also works for the Iraqi government. Due to the instability of the Iraqi government, I find that their positions could potentially place Applicant in a position of having to choose between his family and the interests of the United States.

¹⁹ See *generally*, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Therefore, I find AG ¶ 8(a) partially applies to those family members who do not have government contact, but not to those who have ties to the Iraqi government.

Applicant and his family left Iraq due to the oppressive government. He deserted from the Hussein army. He was a refugee in Turkey with his family before being granted political asylum in the United States. He has a large extended family, most of whom are citizens or permanent residents of the United States, as is his immediate family. Applicant has been working with the military in Iraq in support of the United States' mission. I found Applicant to be candid, sincere, and credible. He has documented to me, through his actions as expressed by those who served with him and his testimony, that since moving to the United States in 1996, he has a deep and longstanding relationship and loyalty to the United States. I am convinced that he would resolve any conflict of interest in favor of the United States. I find AG ¶ 8(b) applies.

Applicant and many of his family sought political asylum in the United States, from the Hussein regime, which treated the Kurdish population horrifically. The regime is no longer in power and some of his family remains in Iraq. His father and mother both live there. They do not have ties to the government. His brother is an officer in the Iraqi army and one of his sisters lives in Iraq with her family. He also has a brother who is a U.S. citizen and who works for the United States government in Iraq. His brother-in-law also works for the Iraqi government in the United States. Applicant maintains regular contact with these family members, such that it cannot be considered casual. Applicant's immediate family and his remaining six siblings are either citizens of the United States or permanent residents residing in the United States. I find AG ¶ 8(c) does not apply.

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 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. Applicant has familial ties in both Iraq and the United States. I have considered the circumstances under which he left Iraq and his commitment to the United States since being granted political asylum. His wife and two of his children are U.S. citizens.²⁰ Applicant has no financial ties to Iraq. He has a large extended family, most of whom are citizens or permanent residents living in the United States. He has been deployed to Iraq for sixteen months and has been an integral part of the military's mission while there. 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."²¹ He does have some familial ties in Iraq, but in the unlikely event there is a conflict of interest, I am convinced, by his demonstrated commitment to the United States, that he would resolve any conflicts in its favor. Overall, the record evidence does not leave me with questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a-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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge

²⁰ His eldest son will become a U.S. citizen after he changes his name.

²¹ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007)