



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



In the matter of:)
)
) ICSR Case No. 10-06726
)
)
Applicant for Security Clearance)

Appearances

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

September 9, 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 March 23, 2009, for his employment as an interpreter 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 December 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 13, 2011.

Applicant answered the SOR on January 13, 2011. He admitted the three factual allegations under Guideline B, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 1, 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 two exhibits, which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 and 2. Applicant testified on his behalf. Applicant offered four exhibits which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through D. 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 and 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 on or about June 15, 2011. He discussed the hearing date with Department Counsel 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 June 21, 2011, and he had sufficient time to prepare. He waived the 15-day notice requirement. (Tr. 6-7)

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 36 years old and employed by a defense contractor as an interpreter for United States forces in Iraq. He is married with no children. Applicant has served as an interpreter twice before and is renewing his application for a security clearance so he can continue to serve in this capacity for the United States military. He received an interim clearance in 2004 to enable him to be employed as an interpreter. (Tr. 31-32, Gov. Ex. 1, e-QIP, dated March 23, 2009)

Applicant and his family were native Kurdish people who lived in the Kirkuk region of Iraq during the first Gulf War in 1991. After coalition forces moved the Iraqi army under Saddam Hussein out of Kuwait, the Iraq government started to retaliate against the Kurdish people because of their support for the coalition forces. The United Nations established a no-fly zone over the Kurdish region to protect the Kurdish people. The United States, under the auspices of the United Nations, entered the area to protect

the Kurds and established an American Forces Transitional Authority (AFTA). The AFTA rebuilt villages and supported the Kurdish people. The United States forces hired some ethnic Kurds, including Applicant's father, to assist in administering the area. In approximately 1996, the area was returned to the control of the Hussein government. As the coalition authorities left the area, they informed the people working for them that they were in danger of retaliation from the returning Iraq government. The coalition authorities offered the workers and their families the opportunity to leave with them and be resettled in the United States. (Tr. 17-20, 36-38)

In December 1996, Applicant and his entire family of seven brothers, two sisters, and his parents were moved with a few hours notice, taken to Guam, and after three months settled in the United States. Applicant was a 20-year-old college student at the time. All of his immediate family still resides in the United States. Applicant became a United States citizen in 2007. His brothers and sisters are also citizens of the United States. His father recently obtained his United States citizenship. Applicant was grateful for what the United States had done for him and his family. They were given life and hope by the United States forces. He told his father that if there was anything he could do for the United States and the troops that saved them, he would do it. (Tr. 17-21, 33-35)

After arriving in the United States, Applicant attended school for awhile and found work in the area where his family settled. During the Second Gulf War in 2003, Applicant learned that the United States Armed Forces needed interpreters in Iraq. Since he was educated in a Kurdish school system, he studied both Arabic and English and he is fluent in these languages. In May 2004, he started working in Iraq for the United States Army and Air Force as an interpreter. The living conditions were not good since the units he supported were at war and there were bombings and shootings. Most of the interpreters he started working with left after a few weeks, but Applicant stayed until November 2007. (Tr.21-22; App. Ex. D, Letter of Appreciation, dated December 31, 2007' App. Ex. E, Certificates of Appreciation, various dates)

During the time Applicant was in Iraq as an interpreter, his future wife was still in the Kurdish region of Iraq. Applicant and his wife were raised in the same village in Kurdish Iraq and had known each other since childhood. When Applicant left Iraq, he and his wife had intended to marry. But he was unable to take her with him and his family. Applicant returned to Iraq in 2001 to marry his wife. Because of immigration issues, he could not get her to the United States until 2007 even while he was employed by the Army as an interpreter. His wife is an Iraqi citizen residing in the United States. Her parents are still residents and citizens of Iraq. Applicants' father-in-law is retired and his mother-in-law is a homemaker. They continue to live in the Kurdish controlled area where Applicant and his wife were raised. This is the safest area in Iraq because of their cooperation with the coalition authorities. He speaks to them frequently by telephone. (Tr. 22-24, 26-27, 40-42)

Applicant took over a year off from his interpreter duties to acclimate his wife to living in the United States. He returned to Iraq as an interpreter in March 2009 working

for Marine units in hostile fire areas. The Marine unit he was assigned to support had eleven interpreters, most for only a few days. He lived with the Marines under harsh and dangerous conditions for over 150 days. The Marine commanders were exceptionally complimentary and appreciative of the interpreting service he provided them. He assisted the Marines in understanding the culture and working with the Iraqi people to forge good relationships. They recognized that Applicant endured the same hardships as the Marines he supported. (Tr. 24-27; App. Ex. A, Letter of Recommendation, dated August 28, 2009; App. Ex. B, Letter of Recommendation, dated August 29, 2009)

Applicant has two uncles who are Iraq citizens, residing in Iraq, who are high ranking members of the Iraqi Army. One is now a brigadier general in the Inspector General's office, and the other is a colonel commanding a reconnaissance unit. In the First Gulf War in 1991, his uncles were low ranking officers in the Iraqi army who, as Kurds, refused to fight against the coalition forces. They returned their weapons and moved into the Kurdish territories for protection. After the First Gulf War and the coalition protection of the Kurdish area, his uncles accepted high level positions in the Kurdish Army offered by the new Kurdish government. In 2003, the Hussein regime was overthrown and the ruling party disregarded during the Second Gulf War. His uncles were recalled back into the Iraq Army by the United States coalition authorities to assist in reestablishing an Iraqi army. Applicant visited his uncles when he went to Iraq in 2001 to marry. His uncles are now stationed in the northern territories of Iraq. Applicant had no contact with his uncles from 1996 when he left Iraq until 2004, except for a short visit in 2001 when he returned to Iraq for his engagement. From 2004 until 2006 when he returned as an interpreter, he had contact with his uncles a few times a year. From 2006 until 2009, he had no contact with them. From 2009 until present, he had only a few telephone contacts with them. (Tr. 38-42; Gov. Ex. 2, Answer to Interrogatory, dated November 30, 2010)

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's immediate family members, except his mother, are citizens and residents of the United States. His mother is still a citizen of Iraq but has resided in the United States with her family since 1996. His wife is a citizen of Iraq but has resided with Applicant in the United States since 2007. Applicant admits that his mother-in-law and father-in-law are citizens and residents of the Kurdish region of Iraq. He also admits his two uncles, who are citizens and residents of Iraq, are high ranking officers in the Iraqi Army. He has frequent contact with his in-laws but infrequent contact with his uncles. 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 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).

The family members in Iraq, his uncles and in-laws, place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant has had little contact with his uncles since his family fled in 1996. His only contact was a short visit in 2001 when he went to Iraq to be engaged and on occasion while performing his interpreter duties for the United States military. He has frequent telephone conversations with his in-laws since his wife calls them frequently. While the contacts are not minimal, the mere existence of the contacts under the circumstances shows that the family relationships are still close and not casual.

Applicant and his family fled Iraq fearing for their lives because his father worked for the United States forces in the Kurdish region of Iraq after the first gulf war. He and his entire immediate family are in the United States. He only has a few relatives left in Iraq. He has no allegiance or sense of loyalty to the government of Iraq. He is an ethnic Kurd. 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 two tours in Iraq for over four years

as an interpreter for the United States military. He has served with forces in the field and lived under the same harsh conditions as the troops. He has been praised by military commanders for his commitment to the United States military and for the assistance he provided them. He is seeking a security clearance so he can return again to Iraq as an interpreter.

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 and his family fled Iraq because his father worked for the United States military placing the family in danger of retaliation by the Hussein government. He became a United States citizen and became a productive member of our society. He has served two tours of duty for over four years as an interpreter for the United States

forces in Iraq. The military members he worked with have praised him for his work with them and noted that he took the same risks under the same conditions as our troops. He has minimal but sufficient 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. However, Applicant has established his strong connection and loyalties to the United States by his willingness to serve with United States forces as an interpreter in the field. He also established he has no loyalty or allegiance to Iraq. He fled that country as a refugee 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 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
Subparagraphs 1.a – 1.c:	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