



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



In the matter of: )  
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----- ) ISCR Case No. 10-06842  
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Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: Hoda Berry, Esquire

02/24/2012

**Decision**

HOWE, Philip S., Administrative Judge:

On February 8, 2008, Applicant submitted his Security Clearance Application (SF 86). On March 24, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 revised adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 13, 2011. He answered the SOR in writing with an undated Answer, and requested a hearing before an administrative judge. DOHA received the request on or about June 17, 2011. Department Counsel was prepared to proceed on July 29, 2011. DOHA issued a Notice of Hearing on October 27, 2011, setting the hearing date for November 16, 2011. I convened the hearing as scheduled on November 16, 2011.

The Government offered Exhibits 1 through 6, and documents for administrative notice, which were received without objection. Applicant testified. He submitted Exhibits A through N, without objection. I kept the record open until December 1, 2011, to allow Applicant to submit additional documents pertaining to an alleged termination in January 2006. Applicant's attorney requested an additional two weeks within which she could submit such documentation. On December 8, 2011, Applicant submitted a document from his previous employer which I marked as Exhibit O. DOHA received the transcript of the hearing (Tr.) on November 29, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq. (Tr. at 15-17.) The request and the attached documents were admitted into evidence as Exhibit 4 and were included in the record as Administrative Notice Documents I through V. Applicant had no objection to these documents. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 44 years old, divorced from his first wife with whom he has four children, and now married since 2007 to his second wife. His present wife is seeking to become a naturalized U.S. citizen. She is a citizen of Iraq at the present time. (Tr. 30, 31, 47-51, 70, 78-81; Exhibits 2, A, B, O)

Applicant served in the Iraqi Army from 1989 to 1990 as required by Iraqi law. In 1991 Applicant fled Iraq, followed by his wife and two children. Applicant went to a refugee camp with his family for three years before being admitted to the United States. Applicant came to the United States in June 1994 with his family. Applicant became a U.S. citizen in April 2002. (Tr. 32, 49, 59, 64 66; Exhibits 1, 2)

Applicant's mother died in 1998. His father was an Iraqi policeman who died in 1973. Applicant has a brother living in Sweden. Applicant's sister lives in Iraq with her husband and five children. Applicant does not tell them anything about his work except that he is a contractor doing construction work in Iraq. Applicant's present wife has a mother and three sisters living in Iraq. (Tr. 33, 60, 71, 84; Exhibits 2, 3)

Applicant contacted his relatives once a month while he was working in Iraq from 2003 to 2006. His present wife calls her mother and sisters in Iraq twice a year from the United States. (Tr. 71)

Applicant worked for defense contractors in Iraq doing translation work from 2003 until June 2006. His first employer was purchased by another one in 2005. In January 2006 he was told the contract under which he was hired had ended and he was sent home. In March 2006 he applied to work with another contractor. He had a counter-intelligence interview in March 2006 after completing the SF-86 and the company application. Applicant told the investigator that if Al-Qaida operatives captured him he would give them anything they wanted. Applicant admitted at the hearing he knew that if captured he would be killed because he worked with the American Army and would be regarded as a traitor to Iraq. This interview also recorded Applicant as stating he was fired in Iraq after being absent for 19 days following his May 9, 2005, hernia operation. Applicant denied he was ever fired from a translation job. Applicant's termination occurred because he was considered a counter-intelligence risk after his comment about Al-Qaida made to two Army investigators. Applicant claims now he was confused by the nature of his cessation of work in January 2006 and did not make the statement as reported. Applicant claims he was reemployed by the original contractor in March 2006 until June 2006 when he was laid off again. He was then unemployed until April 2007. Applicant's security clearance from 2005 ended in January 2006. He worked for his employer until June 2006 without a security clearance. Applicant's exhibit from the contractor who employed him states it does not have historical information on Applicant's termination reasons. The wording of the exhibit shows me that Applicant was terminated, but the specific reasons are no longer shown in the company's records. (Tr. 33, 51-58, 82-117; Exhibits 5, 6, P)

Applicant majored in English in a college that he attended in Iraq before he fled the country. Applicant testified he could comprehend different Arabic language dialects, thus enhancing his translation abilities and value. He declared his "language fluency is very advanced." (Tr. 43, 62)

Applicant submitted 14 documents consisting of two letters of recommendation and 12 standard printed certificates of appreciation from his superiors in the U.S. military for whom he provided translation services from 2003 to 2011. The letters date from 2003 to 2011. (Tr. 38; Exhibits A to N)

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove the dictator Saddam Hussein from power in Iraq. That effort was successful, and a new constitution was written by the Iraqi people. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains plagued by violence though safer and quieter this past year than previously due to the American troop increases since 2007. Violent acts are perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have target the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Although the new government has taken aggressive action against terrorists, the threat of terrorism in Iraq remains high, as do human rights abuses. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (Exhibit 4, Administrative Notice Documents)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 (AG ¶ 2(a)). 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. 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, "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 and has the ultimate burden of persuasion as to obtaining 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 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 pertaining to 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. interest, 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 several conditions that could raise security concerns under AG ¶ 7. Two 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;<sup>1</sup>
- (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
- (c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security.

Applicant's mother-in-law and three sisters-in-laws are citizens of Iraq, Applicant's former wife and their children live in the United States and are naturalized U.S. citizens. His present wife is an Iraqi citizen residing in the United States as a resident alien seeking U.S. citizenship. Her mother and three sisters live in Iraq. While

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<sup>1</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Iraq struggles with the creation of a democracy, it continues to be routinely victimized by terrorist attacks. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest for Applicant. AG ¶ 7(a) and (b) have been raised by the evidence.

Applicant was interviewed in 2006 by two U.S. Army investigators who explained their questions carefully to Applicant. Applicant stated he was fired by one contractor and that if Al-Qaida captured him he would give them whatever they wanted. Applicant admitted at the hearing he knew he would be killed by Al-Qaida operatives if he were ever captured because as an Iraqi-born person helping the United States he was regarded as a traitor. The investigation concluded Applicant was a counter-intelligence risk because of his answer and because he was fired by the contractor who employed him. AG ¶ 7 (c) applies.

The Government produced substantial evidence of those three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. Two conditions that could mitigate the disqualifications are provided under 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

(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;

Applicant did not establish the application of AG ¶ 8(b). Applicant only became a U.S. citizen in 2002. In 2003 he went to Iraq to translate for the U.S. military while employed by a government contractor. While there he communicated monthly with his family members. He met and married his second wife in Iraq in 2007. He has not had sufficient time to separate himself from his ancestral connections to Iraq. Based on his family relationships and the lack of time to develop a depth of loyalty to the U.S., he cannot be expected to resolve any conflict of interest in favor of the U.S. interests.

Especially troubling is the serious and substantial discrepancy contained in the exhibits evidencing his interview in 2006 with two U.S. Army investigators. Applicant studied English in the Iraqi university he attended, and presents himself as having great linguistic skills. He cannot now state with any persuasiveness that he did not understand what he was asked in that interview. He told the investigators if he were captured by Al-Qaida operatives he would give them whatever they wanted, ostensibly to save his life. There is also a major conflict between his testimony now that he was not fired from a contractor's translating position and his statement in 2006 that he was fired.

I believe the earlier statements because they were closer to the actual events and more reliable.

AG ¶ 8(c) has no application to Applicant's relationship with his spouse, because she has a "green" card and lives in the United States with him. There is no likelihood that his marital relationship will create a risk for foreign influence or exploitation. It has some application to his contact with his wife's family members in Iraq, because she does have contact with them and could influence her husband to protect them if they were threatened. There is a possibility that terrorists could attempt to coerce or threaten Applicant through his mother-in-law or his wife's siblings living in Iraq because of his translating work and his flight from Iraq in 1991.

### **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.

The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Several circumstances weigh against Applicant in the whole-person analysis.

First, there is a significant risk of terrorism and human rights abuses in Iraq. More importantly for security purposes, terrorists hostile to the United States actively seek classified information. Terrorists, and even friendly governments, could attempt to use his mother-in-law and her daughters, who live in Iraq, to obtain such information.

Second, he had connections to Iraq before he left there in 1991. He was born in Iraq and spent his formative years there. He served in the Iraqi Army from 1989 to 1990.

Third, he was fired from his contractor translating job because he was absent without leave for 19 days after his 2005 hernia operation. Applicant never offered an explanation as to his whereabouts for that time.

Fourth, Applicant's statement to the investigators that he would give Al-Qaida operatives whatever they wanted if they captured him, even though he testified at the hearing that he knew if he were captured he would be executed by them. Al-Qaida regarded Iraqis who worked for the United States as traitors. Applicant did not have a credible and persuasive explanation concerning these serious discrepancies.

Some mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant is a mature person. He came to the United States as a refugee in 1994 and became a naturalized citizen in 2002. He has worked in the United States since his arrival and currently resides with his second wife. He owns two houses in the United States consisting of the house where his first wife and children live, and the house in which he lives with his second wife. I do not give much weight to the two letters of recommendation because they were written in 2003 and 2005, before the critical interview with the Army investigators. The certificates of appreciation are standard-issue printed documents given to employees in government agencies. I give them only minimal weight and do not find them persuasive on the issue of foreign influence.

Applicant held an interim security clearance during his tenure in Iraq without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 (App. Bd. Nov. 14, 2006) as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.



