



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



In the matter of:)
)
-----) ISCR Case No. 11-02203
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

January 10, 2012

Decision

HARVEY, Mark, Administrative Judge:

Applicant was born in Iraq and lived there until 1991. He returned to Iraq from May 2003 to April 2005, from December 2005 to 2007, and from December 2009 to February 2010. In the summer of 2007, Applicant married an Iraqi citizen and resident. For about 15 months after their marriage, she lived in the United States, and then she lived in Iraq from March 2009 to February 2010. He is close to his mother and brother, who are living in Iraq. His spouse is close to her father, who is disabled and receives an Iraqi Government pension. Although he voted in an Iraqi election, this was an isolated action that he believed was encouraged by the U.S. Government. Foreign preference concerns are mitigated; however, foreign influence security concerns are not fully mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 27, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) (Government Exhibit (GE) 1). On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines C (foreign preference) and B (foreign influence). (HE 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 11, 2011, Applicant responded to the SOR and requested a hearing before an administrative judge. (HE 2) On October 18, 2011, Department Counsel was prepared to proceed. On October 20, 2011, DOHA assigned the case to me. On November 4, 2011, DOHA issued a hearing notice. (HE 1) On December 13, 2011, the hearing was held. (Transcript (Tr. 5)) At the hearing, Department Counsel offered two exhibits (Tr. 16; GE 1-2.), and Applicant offered ten exhibits. (Tr. 20-27; AE A-J) There were no objections, and I admitted GE 1-2 and AE A-J. (Tr. 17, 22-27) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) I received the transcript on December 21, 2011.

Procedural Ruling

Department Counsel requested administrative notice (AN Request) of facts concerning Iraq (AN Request with Ex. I to V; Tr. 16-17). Department Counsel provided supporting documents to show detail and context for these facts. Applicant did not object, and I granted Department Counsel's request. (Tr. 17)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant admitted the SOR allegations with explanations in his response to the SOR (HE 2). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 49-year-old linguist or translator and a recruiter for linguists. (Tr. 6-7) He was born in Iraq, and he lived in Iraq until he became a refugee in 1991. (Tr. 30) He earned an associate's degree in accounting, which the Iraqi Government funded.

¹The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

(Tr. 6, 30) He served in the Iraqi Army for about one year in 1988 to 1989. (Tr. 32-33) In 1991, he joined the uprising against Saddam Hussein. (Tr. 33-34; GE 2 at 3) When that uprising was unsuccessful, Applicant and his brother fled Iraq. (Tr. 33-34, 38; GE 2 at 3) After about 30 months in a refugee camp, Applicant and his brother were authorized by the U.S. State Department to enter the United States. (Tr. 33-36) In August 1993, he entered the United States. (Tr. 35-36; GE 2 at 3) In 1999, he was naturalized as a U.S. citizen. (AE G) He worked as a truck driver from 1996 to 2003. (Tr. 37)

From May 2003 to April 2004, Applicant was deployed to Iraq, as a linguist on behalf of a Department of Defense contractor in support of Special Operations, and he risked severe injury and death on behalf of the United States. (Tr. 38-40) In April 2004, his clearance was revoked because of financial problems, including a bankruptcy. (Tr. 40, 86; GE 2 at 19)² From April 2004 to January 2005, he worked for the U.S. Embassy in Iraq, where a clearance was not required. (Tr. 40)³ From April 2005 to December 2005, he was a linguist recruiter and worked in the United States. (Tr. 40)

In June 2005 and December 2005, Applicant went to Iraq to search for a wife. (Tr. 40-41; GE 2 at 4) He began working as a linguist for Special Operations from about December 2005 to July 2006. (Tr. 41; GE 2 at 12) From December 2005 to August 2007, Applicant lived in Iraq, except for seven weeks. (Tr. 41-42; GE 2 at 4, 12) During this time, he lived with his mother and brother, except when he was on operations on behalf of the U.S. Government. (Tr. 42-43) For this two-year period, he also had frequent contact with his brother and sister and their families. (Tr. 43) During the 2005 to 2007 tour in Iraq, he reconnected with his Iraqi friends. (Tr. 44-45)

In the summer of 2007, Applicant married a 27-year-old Iraqi citizen and resident. (Tr. 42, 46; SOR ¶ 2.a) She was a teacher in Iraq for about one year before her marriage, and she received her pay from the Iraqi Government. (Tr. 49-51) After this marriage, Applicant returned to the United States. (GE 2 at 5) In October 2007, his spouse received a U.S. Visa. (Tr. 45-46) In 2007, they had a small wedding in Iraq, and in 2008, they had a large reception in Iraq, which was attended by about 500 people. (Tr. 47, 48) His spouse was threatened in Iraq because she married Applicant and there is some residual hostility in Iraq for Iraqis who have become U.S. citizens. (Tr. 57) In October 2008, Applicant brought his wife to the United States. (Tr. 46; GE 2 at 14)

Applicant's father-in-law was paralyzed while on duty as an Iraqi military officer in 1982, and Applicant's spouse is his only child. (Tr. 51) He receives a pension from the Iraqi Government. (Tr. 52) She has a close relationship with friends and her extended family in Iraq, and she frequently communicates with them. (Tr. 52-53) She communicates with her father and uncle almost every day. (Tr. 52)

²In 2008, Applicant's security clearance was reinstated. (Tr. 87)

³ An Iraqi linguist (L), who worked for Applicant in his Embassy-related job, was kidnapped and killed because of L's assistance to the United States. (Tr. 77) The terrorists obtained Applicant's phone number from L's phone and called and threatened Applicant. (Tr. 78) Applicant left Iraq two days later. (Tr. 79)

In March 2009, Applicant's spouse returned to Iraq until February 2010. (Tr. 53-55) In March 2009, she was feeling homesick and was having a difficult pregnancy. (Tr. 54) She returned to Iraq so that her family could care for her because Applicant did not have an adequate support system for her in the United States. (Tr. 54) She attempted to return to the United States in July 2009; however, she had medical problems and returned to Iraq. (Tr. 55-56) Applicant went to Iraq in December 2009, and he was able to bring his spouse and son (his son was born in Iraq in September 2009) to the United States in February of 2010. (Tr. 56, 58) Applicant and his spouse have not returned to Iraq since February 2010. (Tr. 59)

Applicant's mother, brother, sister, father-in-law, and various extended family members and friends are citizens and residents of Iraq. (SOR ¶¶ 1.b to 1.e; HE 2, HE 3) Applicant's father is deceased. (Tr. 61) His brother who lives in Iraq served in the Iraqi Army about ten years. (Tr. 31) He is close to his mother and calls her about every two weeks. (Tr. 60) His older brother has lived in Iraq his whole life and lives there today. (Tr. 61) He is close to his older brother, and he speaks to him when he calls his mother. (Tr. 64) His sister was born in Iraq and lives in Iraq. (Tr. 70) His brother-in-law works for the Iraqi Ministry of Trade, and his paycheck is from the Iraqi Government. (Tr. 72) He is close to his sister; however, he only telephones her about five or six times a year. (Tr. 72-73) He provides financial gifts to his family living in Iraq. (Tr. 79) His siblings and mother in Iraq know he works for the U.S. Government, and his brother knows he is a linguist working for the U.S. Government. (Tr. 83-84)

Applicant does not own property in Iraq. (Tr. 79) His equity in his U.S. residence is about \$30,000, and his total assets in the United States are valued at about \$50,000. (Tr. 80)

The brother that came with Applicant to the United States in 1991 still lives in the United States. (Tr. 65) He became a U.S. citizen in 2000. (AE H) His younger brother came to the United States in 2000, and he became a U.S. citizen in 2008. (Tr. 67-68; AE I) His younger brother also lives in the United States. (Tr. 67-68)

Applicant conceded that his assistance to the United States places his family living in Iraq in danger. (Tr. 75, 84-85) He changed his name to make it more difficult for terrorists to connect him with his family living in Iraq. (Tr. 75; GE 2 at 11) Applicant wrote, "True Iraqi citizens highly dislike Iraqi citizens and if their family name is found out they could be killed." (Tr. 75)

In 2003, Applicant was working as a linguist in Iraq, and he was injured. (Tr. 18) He provided medical records showing he received shrapnel wounds to his right arm, right shoulder, and right ankle. (Tr. 19; AE A) He received treatment in a military medical facility in Iraq. (Tr. 19; AE A)

Applicant noted:

I was helping the country and I was in very, very difficult operations you know, because I'm from Iraq, [and] I put myself and my family in danger at

that time when I was working with the military in Special Operations because I could lose all [of] my family. They can kill them if they found out I was working with the [U.S.] Government.

(Tr. 28) Applicant emphasized that he was loyal to the United States. (Tr. 88) His service to the United States involved danger to him. (Tr. 88) He wants to continue helping the United States, even though it involved danger to himself and his family living in Iraq. (Tr. 88)

Foreign Preference

SOR ¶ 1.a alleges and Applicant admitted that he voted in an Iraqi election in 2010. (HE 2) Applicant observed that commentators on CNN were encouraging Iraqi-Americans to vote in Iraqi elections. (Tr. 27) He wanted to stabilize Iraq because that would help the United States. (Tr. 27) He voted to make Iraq better and because he was proud that Iraq was having free elections. (Tr. 81) He, his spouse, and his two brothers living in the United States went to a polling place in a nearby state and voted. (Tr. 28, 82) He reported that he voted to his security officer three days after he voted. (Tr. 28) He promised that he will never vote in an Iraqi election again. (Tr. 28) He votes in U.S. elections. (Tr. 83)

Character Evidence

Applicant's employers describe him as energetic, capable, cheerful, intelligent, and innovative. (AE B) He provided diligent, responsive, and highly professional support to his company and the Department of Defense. (AE B, E) He earned the respect of his colleagues. (AE E)

Iraq⁴

In 2003, the United States led a coalition to remove Saddam Hussein and his Ba'athist regime from power in Iraq. Following the swift invasion and successful removal from power, the United States endeavored to set a solid foundation of democratic institutions in Iraq. The Constitution in Iraq was ratified on October 15, 2005. After free elections in 2005, Iraq's new government, a parliamentary democracy, took office in March 2006. On March 7, 2010, Iraqi citizens participated in a new round of parliamentary elections.

A substantial portion of Iraq's exports are in crude oil and crude oil materials, and a large amount of those exports went to the United States. The United States' ultimate goal in Iraq is to establish a peaceful, united, stable, democratic, and secure nation that will be an ally of the United States in the war against terrorism. The United States has invested thousands of lives and billions of dollars to assist in the reconstruction of Iraq.

⁴The facts in the section concerning Iraq are from Department Counsel's factual summary, except for some comments about the relationship between the United States and Iraq, which are from the U.S. Department of State, *Background Note: Iraq*, May 2, 2011 (AN Report, enclosure I) and U.S. Department of State, *Country Specific Information: Iraq*, May 2, 2011 (AN I, enclosure IV).

Success in Iraq is a national priority of the United States. On August 31, 2010, the United States completed withdrawal of combat brigades from Iraq, and at the end of 2011, the remaining U.S. military forces withdrew from Iraq.

Despite the elections and new government, Baghdad, Mosul and several other areas have especially serious problems with violent terrorists and insurgents. Although there have been recent improvements in the security environment, Iraq remains dangerous, volatile and unpredictable. Some areas of Iraq are more peaceful and less susceptible to terrorist attacks than others; however, all areas of the country are still very dangerous. Terrorists have the ability to strike most areas of the country with explosive devices and mines. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with U.S. and Iraqi aggressive governmental action against terrorists, the threat of terrorism in Iraq remains very high. Terrorist groups can conduct intelligence activities as effectively as state intelligence services.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision,

in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude Guidelines C (foreign preference) and B (foreign influence) are the relevant security concerns with respect to the allegations set forth in the SOR.

Foreign Preference

AG ¶ 9 articulates the security concern relating to foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 lists various foreign preference conditions that could raise a security concern and may be disqualifying stating:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: . . . (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶ 10(a)(7) applies because Applicant voted in an Iraqi election in 2010. None of the other disqualifying conditions in AG ¶ 10 apply. Consideration of potential mitigating conditions is required.

AG ¶ 11 lists six conditions that could mitigate security concerns include:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(f) partially applies. Although Applicant did not provide an official U.S. Government document showing he was encouraged to vote in the Iraqi elections, he receives some mitigation because he reasonably assumed, based on all the publicity in the United States about the Iraqi elections, that his voting in that election was consistent with U.S. interests. Absent official U.S. Government encouragement to vote in the Iraqi elections, foreign preference concerns cannot be fully mitigated under AG ¶ 11. Nevertheless, foreign preference concerns are mitigated under the whole-person concept, as discussed *infra*.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three conditions that could raise a security concern and may be disqualifying 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, 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
- (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.

Applicant was born in Iraq and lived there until 1991. From May 2003 to April 2005, Applicant was deployed to Iraq on behalf of the U.S. Government as a linguist. In June 2005 and December 2005, Applicant went to Iraq search for a wife. He returned to work as a linguist in Iraq for the U.S. Government in December 2005 until 2007. From 2005 to 2007, he lived with his mother and brother, except when he was on operations on behalf of the U.S. Government. In the summer of 2007, Applicant married an Iraqi citizen and resident. She came to the United States in October 2008, and then she lived in Iraq from March 2009 to February 2010. He is close to several family members living in Iraq. Although he voted in an Iraqi election, this was an isolated action.

Applicant and his spouse live in the same household, and were both born in Iraq. Applicant's mother, his brother, his sister, and his father-in-law are citizens and residents of Iraq. (SOR ¶¶ 2.a to 2.d) Although Applicant's spouse now lives in the United States, she is still a citizen of Iraq. She is close to her father. Applicant's father-in-law is dependent on the Iraqi Government because he is disabled and dependent on

his military pension. Although Applicant has spent about half of his time in Iraq after 2003, he has served the interests of the United States while in Iraq. His time in Iraq does not raise a security concern.

Applicant's communications with some of his family members living in Iraq are frequent and those communications are an objective way of showing he has ties of affection for family living in Iraq. His spouse has frequent, almost daily communications with her father, who is living in Iraq. In 2011, the Appeal Board stated:

[I]n-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.

ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011) (citing ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005)).

Applicant has not rebutted this presumption. His relationship through his spouse with her father living in Iraq is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his family and in-laws living in Iraq. See ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). He has deep affection for his mother and brother, who are living in Iraq. His communications with his sister are less frequent, and accordingly, that relationship does not raise a security concern, and that part of SOR ¶ 2.c is mitigated.

The mere possession of close family ties with his spouse, mother, and brother, is not, as a matter of law, disqualifying under Guideline B. However, if he has a close relationship with even one relative, who has a relationship with another family member living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The close relationship of the Iraqi Government with the U.S. Government, reduces Applicant's burden of persuasion to demonstrate that his relationships with his spouse, her family and his mother and brother do not pose a security risk. The U.S. and Iraqi Governments have very close ties forged through more than eight years of being allies in a conflict against insurgents and terrorists. Nevertheless, Applicant should not be placed into a

position where he might be forced to choose between loyalty to the United States and a desire to assist family living in Iraq.

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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives or terrorists seek or have sought classified or economic information from or through Applicant or his family; nevertheless, his relationship with his spouse, his mother, and his brother create a potential conflict of interest because his relationship with them is sufficiently close to raise a security concern about his desire to assist family members in Iraq by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s contacts with his spouse and brother, and his spouse’s contacts with her father. Applicant has strong affection for his mother, his brother, and his spouse. His and his spouse’s relationships with family members living in Iraq raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b) and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with his spouse, who lives with him, and frequent contact with his mother and brother, who live in Iraq. Applicant indicated his wife has frequent contacts with her father, who is living in Iraq. He has deep affection for his mother and brother, and his spouse has deep affection for her father. Because of his mother, brother, and spouse's connections to Iraq, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Iraq citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established that "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest." In 1993, Applicant emigrated to the United States to flee Saddam Hussein's persecution. He became a U.S. citizen. Two of his brothers have moved to the United States and become U.S. citizens. His spouse and son moved to the United States. Applicant and his spouse have some U.S. property (about \$50,000), and they do not have any property or investments in Iraq. Most importantly, he has served in Iraq with U.S. Armed Forces in a combat zone. He has shown his patriotism, loyalty and fidelity to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his spouse and, through her, with her father living in Iraq as well as his relationship with his mother and brother, who are living in Iraq. His spouse frequently communicates with her father, and he frequently communicates with his mother and brother. Her father is disabled and living on a pension paid by the Iraqi Government. He is particularly vulnerable to threats and coercion. There is also evidence that terrorists or criminals have approached or threatened Applicant because of his work for the United States. As such, there is an increased possibility that Applicant or Applicant's family would be targets for improper coercion or exploitation. Applicant has taken some measures to disguise his connection to his family, such as by changing his name; nevertheless some of his family members are aware of his work for the U.S. Government.

AG ¶¶ 8(d), and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Iraq. Applicant is not required to report his contacts with family members living in Iraq.

AG ¶ 8(f) partially applies because Applicant has no property or bank accounts in Iraq. This mitigating condition can only fully mitigate AG ¶ 7(e), which provides, “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.”

In sum, Applicant’s connections through his spouse and mother to family living in Iraq, along with his father-in-law’s dependence on the Iraqi Government, and the threat and danger to his family living in Iraq, in combination are more significant than his strong connections to the United States. His connections to the United States taken together are not sufficient to fully overcome the foreign influence security concerns under Guideline B.

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 have incorporated my comments under Guidelines C and B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are important circumstances tending to support approval of a clearance for Applicant; however, they are not sufficient to overcome foreign influence security concerns. In 1991, Applicant fled Iraq, and in 1993, he settled in the United States. In 1999, Applicant became a U.S. citizen. His spouse, who was also born in Iraq, entered the United States in 2008. His spouse, son, two brothers, and his brothers’ families live in the United States. Applicant and his two brothers are U.S. citizens. Applicant returned to Iraq and served with U.S. Armed Forces as a linguist for about four years from 2003 to 2010. He volunteered to go on hundreds of dangerous missions as part of his translator duties, and he was injured by shrapnel in 2003. His employer lauds his duty performance and contributions to mission accomplishment. He is 49 years old, and he is mature and responsible. He has greater contacts or connections with the United States than with Iraq. He does not own property in Iraq, and his property in the United States is

valued at about \$50,000. When he was naturalized as a U.S. citizen, he swore allegiance to the United States. Although he voted in an Iraqi election in 2010, this action was isolated, and his vote was under the belief that he was helping both the United States and Iraq. Now that he understands the security significance of voting in a foreign election and the other Guideline C constraints, he will not take any action that shows a foreign preference. His preference and loyalty is clearly for the United States' interests over Iraqi's interests, and foreign preference concerns are mitigated under the whole-person concept.

Applicant has often put himself in harm's way, working alongside U.S. Armed Forces and U.S. State Department personnel. He has made significant contributions to national security, fully aware of the risks to himself and his family. All these circumstances demonstrate that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's strong connections to the United States and especially to his U.S. family, community and his employment as a translator in a combat zone establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." See Discussion of AG ¶ 8(b).

There are even more significant facts supporting a foreign influence security concern because of Applicant's family connections to Iraq, and the risk that his family members face in the event that insurgents, terrorists, or criminals discover his support for the United States. Applicant and his spouse live in the same household, and both of them were born in Iraq. Applicant's mother, his brother, and his father-in-law are still residents and citizens of Iraq.

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation in Iraq, as well as the dangers existing in Iraq.⁵ Iraq is a very dangerous place because of violence from insurgents and terrorists. Insurgents and terrorists continue to threaten the Iraqi Government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. Applicant recognizes his work with the U.S. Government endangers his family living in Iraq. The United States and Iraq are allies in the war on terrorism and the United States is committed to the establishment of a free and independent government in Iraq. Iraq and the United States have close relationships in diplomacy and trade.

In ISCR Case No. 09-06457 (App. Bd. May 16, 2011), the Appeal Board concluded that an Applicant's father, who was prominent in the Afghan Government and who had guards for protection because of his position, might receive additional danger or threats because his son wanted to be a linguist in Afghanistan. The Appeal Board explained their rationale for reversing that grant of access to classified information stating:

⁵ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

In the case before us now, those who might be tempted to use Applicant's father as a means of coercion include terrorist organizations that are hostile to the U.S. and that are engaged in operations designed to defeat our geopolitical goals. As we have previously stated, terrorist activity in a foreign country is an important consideration in Guideline B cases. See, e.g., ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007).

Applicant has frequent contacts with his mother and brother, and his spouse has almost daily contact with her father. Applicant's father-in-law is dependent on the Iraqi Government for disability assistance. Applicant conceded that should insurgents, terrorists, or criminals discover his U.S. connections, his family living in Iraq would face a high probability of reprisal. Applicant's relationship with his family is well known as shown by the large reception his family hosted in Iraq in 2008 to celebrate his marriage. His family and his spouse's father do not receive any special protection from the Iraqi Government and are vulnerable should terrorists or insurgents seek to harm them.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully mitigated the foreign influence security concern.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a to 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge