



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-01406
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison Patricia O'Connell, Esq., Department Counsel  
For Applicant: Eric A. Eisen, Esq.

03/27/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated foreign preference and foreign influence security concerns. Clearance is granted.

**Statement of the Case**

On August 21, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the foreign preference and foreign influence guidelines.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish her eligibility for access to classified information.

On January 26, 2017, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing and the exhibits offered by the parties were admitted into the administrative record without objection. (Government Exhibits 1 – 4 and Applicant's Exhibits A – D.)

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

At the conclusion of the hearing, I advised the parties that the case appeared appropriate for summary disposition in Applicant's favor. On January 30, 2017, Department Counsel objected and requested a full decision. The hearing transcript (Tr.) was received on February 3, 2017.<sup>2</sup>

## **Findings of Fact**

### *General Background*

Applicant was born and raised in Iraq. She explained that her "liberal," pro-western views clashed with traditional Iraqi views and expectations regarding the role of women. She sternly corrected her counsel when he referred to Operation Iraqi Freedom as an "invasion." She views the U.S.-led war as a "liberation."<sup>3</sup> She went on to describe her feelings during the liberation of Iraq by U.S. forces in 2003, as follows:

I was very happy because, finally, I felt like my team won and the U.S. is here to liberate us from Saddam Hussein.<sup>4</sup>

Shortly after the fall of Baghdad, Applicant began working with the U.S. military. She took a job with the U.S. military though it paid less than a position she held at the time with a non-governmental agency. She worked for the U.S. military in Iraq for about two years. She placed her life at risk everyday while working for the U.S. military and her efforts directly helped saved the lives of U.S. service members. She was almost killed by a car bomb and, with the strong support and encouragement of her family, especially her father, returned to work the next day. She left Iraq with the help of the U.S. Government after she and her family received death threats because of her work in support of the U.S. military. She provided documents from U.S. military officers that commanded the military unit she worked for in Iraq and other documents from reliable U.S. sources regarding her efforts in support of U.S. military operations and the threats she faced before leaving Iraq.<sup>5</sup>

After coming to the United States, Applicant stayed with a couple who think of themselves as her U.S. stepparents. She had worked with one of them in Iraq. She has worked for several different DOD contractors in direct support of the U.S. military since immigrating to the United States. She has been with her current employer since 2010. She became a U.S. citizen in 2012. She testified emotionally and credibly as follows in describing the naturalization ceremony:

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<sup>2</sup> Prehearing correspondence, the notice of hearing, case management order, and Department Counsel's objection are attached to record as Appellate Exhibits (App. Exh.) I – IV.

<sup>3</sup> Tr. 14.

<sup>4</sup> Tr. 15.

<sup>5</sup> Tr. 17-24, 39-44; Exhibit B.

It was the proudest moment of my entire life. It was like the icing on the cake. I always tell friends -- when I invited friends, I told them, "You must be here because this is the wedding I've never had." And it was a celebration. I had everybody who was in my journey and was important to me.<sup>6</sup>

A number of individuals, including her U.S. stepparents, close friends, supervisors and coworkers, submitted letters attesting to Applicant's superior work ethic, honesty, trustworthiness, and reliability. Each of these persons, many of them current or former U.S. service members who are aware that Applicant has family still living in Iraq, personally vouch for Applicant's loyalty to the United States and strongly recommend her for a security clearance. Applicant earned a master's degree from a U.S. university while working full time as a DOD contractor.<sup>7</sup>

### *Foreign Influence*

Applicant's parents and a brother are her only close relatives living in Iraq. Her parents are both retired, though her father continues to work and teach. Her parents receive a small pension from the Iraqi government. Her brother works for a hospital and she last saw him about 10 years ago. He wishes to leave Iraq, but has been unsuccessful in his attempts to obtain a U.S. visa. Applicant has other siblings who now live in the United States, including a brother who also fled Iraq when the family was threatened in 2005 because of Applicant's work for the U.S. military. Applicant credibly testified as follows when asked what she would do if faced with a threat to her family in Iraq that might pose a conflict with her security obligations:

Well, the death threat I received was of a similar nature, and what I did, I just reported it. That's the extent I can do. I report it and hope it won't -- it's not serious or it won't happen.<sup>8</sup>

During her parents' recent visit to the United States, Applicant and her siblings tried to convince them to move here, as most of the family, including several of their grandchildren, now live in the United States. Applicant continues to try to convince her parents to relocate to the United States. Applicant disclosed her foreign familial connections and contacts on her security clearance application.<sup>9</sup>

### *Foreign Preference*

Applicant held an Iraqi passport before becoming a U.S. citizen. This Iraqi passport was set to expire in 2016. Applicant surrendered it to her company's facility

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<sup>6</sup> Tr. 33.

<sup>7</sup> Exhibits B and C.

<sup>8</sup> Tr. 35.

<sup>9</sup> Exhibit 1.

security officer (FSO) in 2015. She voted in Iraqi elections in 2005 and 2010. She did so in defiance of death threats by anti-U.S. forces. She hoped her actions would promote democracy in her country of birth. She voted in Iraqi elections in 2010 through one of Iraq's consulates or its embassy in the United States. She recognized this was the last time that she would get to do so before becoming a U.S. citizen. She reported this information on her clearance application. She has indicated a willingness to renounce her Iraqi citizenship. She has not returned to Iraq since she left in 2005 or 2006. Applicant and her family have not received any death threats since she left Iraq.<sup>10</sup>

### *Administrative Notice – Iraq*

Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups and elements hostile to the United States remain active in Iraq. The Islamic State of Iraq and the Levant (ISIL) controls some Iraqi territory, though Iraqi forces, with the assistance of the United States, have seen successes in the last several months and most of the territory previously held by ISIL has been retaken. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all but essential travel to Iraq should be avoided. Additionally, human-rights related problems including disappearances, torture, denial of fair public trial, and limits on freedom of speech and expression have been noted as a concern.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

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<sup>10</sup> Tr. 25-28, 37-38, 44-45; Exhibit 1, Exhibit D.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an 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**

The foreign influence security concern is explained at AG ¶ 6:

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.<sup>11</sup>

An individual is not automatically disqualified from holding a security clearance because they have connections and contacts in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence-gathering history of that government; the country's human rights record; and other pertinent factors.<sup>12</sup>

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<sup>11</sup> ISCR Case No. 09-07565 at 3 (App. Bd. July 12, 2012) ("As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, such as the foreign residence of an applicant's close relatives.") (internal citation omitted).

<sup>12</sup> ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

The United States and Iraq are allies in the war against ISIL. However, the serious security threat posed by these terrorists and other elements hostile to the United States must be taken into account in assessing the security concerns raised by Applicants connections to and contact with her family that remains in Iraq. Applicant's relationship to these foreign relatives, coupled with the facts administratively noticed, raise a heightened security concern.

In assessing the security concern raised by Applicant's foreign connections and contacts, I have considered the following disqualifying and mitigating 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; and

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.

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(e): the individual has promptly complied with existing agency requirements regarding the reporting of [foreign] contacts.

An individual with family members and other connections in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted access to classified information."<sup>13</sup> However, what factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.<sup>14</sup>

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<sup>13</sup> ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

<sup>14</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

In the present case, Applicant has a long track record of resolving potential conflicts raised by her foreign relatives in Iraq and her fiduciary responsibilities to the United States in favor of U.S. interests. Of note, for a period of about two years, in the face of constant death threats and during a time when U.S. forces in Iraq were confronting a deadly insurgency, Applicant repeatedly faced down those threats and maintained her fiduciary obligations to the United States.

Moreover, these threats were not only just leveled against Applicant but also her family in Iraq. Applicant, with the encouragement of her family, including her parents who remain in Iraq, remained loyal to her U.S. military unit, dutifully reported the threats, and never wavered in her fiduciary responsibilities to the United States. Thus, when Applicant testified that she would report any attempts to sway her through her family in Iraq and would resolve any potential conflict in favor of the United States, such testimony is fully supported by a long and distinguished track record of Applicant doing just that and substantial independent evidence.<sup>15</sup> Additionally, over the past decade, Applicant has developed deep and long-lasting bonds in the United States, as evidenced by the numerous reference letters submitted on her behalf.

Accordingly, after a complete and thorough review of the record evidence and examining said evidence in a commonsense manner, while remaining mindful of my duty to resolve any unmitigated doubt in favor of protecting national security, I find that Applicant mitigated the security concerns raised by her connections to and contact with her family in Iraq.<sup>16</sup>

### **Guideline C, Foreign Preference**

The SOR alleges that Applicant's past possession of an Iraqi passport raises a foreign preference security concern. Under AG ¶ 9, such concern arises "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States." Also, an individual who holds a preference for a foreign country or entity

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<sup>15</sup> ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008) ("Generally, an Applicant's statements, by themselves, as to what he 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 U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case. In this case, Applicant has served the U.S. military as a translator in dangerous circumstances in Afghanistan and has risked his life to protect American personnel there.) See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) ("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. 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. 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.") (internal citations omitted).

<sup>16</sup> The SOR also alleged Applicant's connections to and contact with her brother who fled Iraq in 2005 or 2006 following death threats due to her work for the U.S. military. He recently immigrated to the United States and any potential foreign influence security concern no longer remains.

“may be prone to provide information or make decisions that are harmful to the interests of the United States.”

An applicant’s possession of a foreign passport may be disqualifying, as it may indicate a preference for a foreign country or entity that would be inconsistent with the fiduciary obligations to the United States expected of all active and prospective clearance holders.<sup>17</sup> Possession of a foreign passport can also create other security risks, such as potentially allowing an individual unfettered international travel that may fly under the radar of U.S. Government screening.

Here, Applicant mitigated any potential concern raised by her past possession of a foreign passport and past exercise of foreign citizenship (i.e., twice voting in Iraqi elections). She surrendered the passport, is willing to renounce her dual citizenship, and she last exercised the right to vote in Iraqi elections seven years ago before becoming a U.S. citizen.<sup>18</sup> Additionally, I have considered the substantial evidence of Applicant’s service to the nation and the other record evidence in concluding that she mitigated the foreign preference security concern.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant’s personal character and integrity, which are vital matters that should always be considered in assessing an individual’s suitability for a security clearance, are unassailable. She has been candid and forthcoming about her foreign connections and other aspects of her background throughout the security clearance process. I had an opportunity to observe her demeanor at hearing and found her credible. Furthermore, she was trusted with sensitive information while working for U.S. forces in Iraq and, notwithstanding the threats to herself and her family, did not divulge that information to the enemy. Her work advanced vital U.S. interests and, more importantly, saved U.S. lives. In short, Applicant met her heavy burden of proof and persuasion to be found eligible for a security clearance.

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<sup>17</sup> See AG ¶ 10(a) (exercise of any right, privilege or obligation of foreign citizenship, to include possession of a current foreign passport).

<sup>18</sup> AG ¶¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship); 11(c) (exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen); 11(e) (the passport has been . . . surrendered to the cognizant security authority).



### **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 (Foreign Preference):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge