



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



In the matter of:

ISCR Case No. 15-06459

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: Sean M. Bigley, Esq., Applicant's Counsel

May, 24, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On April 12, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on June 5, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on October 24, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 24, 2016, scheduling the hearing for November 17, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 3, which were admitted. Applicant testified on his own behalf. Applicant presented four documents, which I marked Applicant's Exhibits (AppXs) A through D. DOHA received the transcript of the hearing (TR) on November 29, 2016.

Procedural Rulings

At the hearing, the Government and Applicant requested I take administrative notice of certain facts relating to Iraq. Department Counsel and Applicant's Counsel provided five-page and three-page summaries of the facts, respectively, supported by documents pertaining to Iraq. The documents provide elaboration and context for the summaries. I take administrative notice of the facts included in the reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to SOR allegations ¶¶ 1.b.~1.f., 1.h. and 1.i. He denied SOR allegation ¶¶ 1.a., 1.g. and 1.j. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor. (GX 1 at page 5.) While living in Iraq, he volunteered and started working with American forces from about April of 2003 until about August of 2008, more than five years. (TR at page 28 line 19 to page 34 line 4.) Applicant immigrated to the United States in 2008. (TR at page 41 line 4 to page 42 line 13, and GX 1 at page 7.) He is married to a Mexican national, who lives legally in the United States. (TR at page 42 line 15 to page 43 line 1, and GX 1 at page 27.) Applicant has one step-child, who is a native-born American. (TR at page 42 lines 16~18, and GX 1 at page 39.)

1.a. Applicant's 61-year-old father, a citizen and resident of Iraq, is a retired Brigadier General from the Iraqi Army. He served as such in concert with the American forces in Iraq. (TR at page 34 line 5 to page 36 line 9, at page 66 lines 2~11, and GX 1 at page 31.) Applicant contacts his parents once or twice a month. (TR at page 49 line 23 to page 50 line 7.) Applicant would not compromise the interests of the United States vis-à-vis those of his Iraqi relatives. (TR at page 44 line 21 to page 45 line 16.)

1.b. Applicant's 52-year-old mother, a citizen and resident of Iraq, is an elementary school teacher. As such, she and all teachers work for the Iraqi Ministry of Education. (TR at page 36 line 12 to page 37 line 2, at page 66 lines 12~18, and GX 1 at page 30.) Applicant contacts his parents once or twice a month. (TR at page 49 line 23 to page 50 line 7.) Applicant would not compromise the interests of the United States vis-à-vis those of his Iraqi relatives. (TR at page 44 line 21 to page 45 line 16.)

1.c. Applicant's 27-year-old brother is a citizen of Iraq, but resides in the United States. He is "an Uber driver." (TR at page 37 lines 3~10, and GX 1 at pages 32~33.) He was granted asylum by the U.S. Government. (TR at page 50 lines 8~17.)

1.d. Applicant's 23-year-old brother is a citizen and resident of Iraq. (TR at page 37 lines 11~16, and GX 1 at page 37.) He is seeking asylum to immigrate to the United States. (TR at page 51 lines 1~12.) Applicant would not compromise the interests of

the United States vis-à-vis those of his Iraqi relatives. (TR at page 44 line 21 to page 45 line 16.)

1.e. Applicant's 29-year-old sister is a citizen of Iraq, but resides in the United States. She works for a "School District." (TR at page 37 line 17 to page 3, and GX 1 at page 34.) She was granted asylum by the U.S. Government. (TR at page 51 line 13 to page 52 line 7.)

1.f. Applicant's 24 year-old sister is a citizen and resident of Iraq. "She is a sales representative at a mall inside the airport." (TR at page 38 lines 4~12, and GX 1 at page 35.) Applicant contacts his sister once or twice a month. (TR at page 51 line 19 to page 52 line 7.) Applicant would not compromise the interests of the United States vis-à-vis those of his Iraqi relatives. (TR at page 44 line 21 to page 45 line 16.)

1.g. Applicant's cousin is a citizen of Iraq, but resides in Finland. (TR at page 38 line 13 to page 39 line 7.)

1.h. Applicant's, retired, 63-year-old mother-in-law is a citizen and resident of Mexico. She lives part of the year, by virtue of a "B1/B2 . . . visiting Visa," with Applicant's family in the United States. (TR at page 39 lines 8~15, at page 52 lines 8~16, and GX 1 at page 38.)

1.i. Applicant, his wife, and his mother-in-law have had no contact with his 64 year-old, Mexican father-in-law for more than 30 years. (TR at page 39 lines 14~16, and GX 1 at page 40.)

1.j. The Applicant has little or no property interest in their family home in Iraq. Should his father pass away, his mother, brother and sister, noted above, still live in the property. Applicant has no interest in going to Iraq to lay claim to his possible, 1/6th interest, in their family abode. (TR at page 40 lines 8~25, at page 55 line 22 to page 57 line 17, at page 63 line 9 to page 64 line 15, and Appx D.)

Notice

Iraq has made significant political and economic progress in recent years, but the country still faces many challenges. Since the 2011 U.S. military withdrawal from Iraq, sectarian and ethnic divisions have widened. Iraq's one-time Al Qaeda affiliate constitutes the most violent component of the Sunni rebellion that has become a major threat to Iraqi stability in 2014. Numerous terrorist groups are also increasingly active throughout Iraq. The ISIS (Islamic State of Iraq and Syria) offensive has caused Iran to increase military support to the Iraqi government.

Policies

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 are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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 EO 10865 provides that adverse 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

The security concern relating to the guideline for Foreign Influence is set out in 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.

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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's parents, one brother and one sister are citizens and residents of Iraq. His mother-in-law also is a citizen of Mexico. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships

and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests;

AG ¶¶ 8(a) and 8(b) are mitigating. Applicant's allegiance is clearly to the United States. He would not place that affection below the interests of his family that remain in Iraq.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Furthermore, Applicant has the full support of those with whom he has worked in the U.S. Army (AppX A), and has numerous awards and recommendations from the U.S. Army (AppX B).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraph 1.a.~1.j:

For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge