



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



In the matter of:

ISCR Case No. 15-06966

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

03/07/2017

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns related to his connections to Iraq and Jordan. Based upon a review of the record as a whole, eligibility for access to classified information is granted.

**History of Case**

On December 8, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 15, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on or about June 6, 2016, and requested a hearing before an administrative judge. (Answer.) The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 6, 2016. DOHA issued a Notice of Hearing on November 8, 2016, setting the hearing for November 30, 2016. On that date, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified and offered Exhibits (AE) A through F into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on December 9, 2016. The record remained open until December 16, 2016, to give Applicant an opportunity to submit additional exhibits.

Post-hearing, Applicant timely submitted three exhibits, which he labeled AE F, AE G, and AE H.<sup>1</sup> Department Counsel objected to Applicant's second document marked AE F (Administrative Notice (Sweden)) on the basis that it was irrelevant because SOR ¶ 1.f was withdrawn. Based on said withdrawal, Department Counsel's objection is sustained and the exhibit is not admitted. Department Counsel's objection to the final paragraph of AE G as being argumentative rather than factual is overruled, and the exhibit is admitted. Department Counsel had no objection to AE H; hence, it is admitted.

### **Procedural and Evidentiary Rulings**

#### **Motion to Amend SOR**

At the commencement of the hearing, Department Counsel moved to amend SOR ¶¶ 1.a and 1.b. to state as follows:

1.a. Your father-in-law is a citizen of Iraq and a resident of Jordan.

1.b. Your mother-in-law is a citizen of Iraq and a resident of Jordan.

Department Counsel also moved to withdraw the following allegation in the SOR:

¶ 1.f. Your friend is a citizen and resident of Sweden.

Applicant had no objections to said amendments and Department Counsel's motions were granted. (Tr. 8.)

#### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq and Jordan. The request and the attached documents pertinent to Iraq and Jordan are included in the record as Hearing Exhibits (HE) 1 and 2.

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<sup>1</sup>At the commencement of the hearing, Applicant submitted AE F, which is a copy of his renunciation of foreign citizenship. In the post-hearing submission, Applicant also marked the exhibit titled Administrative Notice (Sweden) as AE F. For purposes of clarity, I remarked that exhibit as AE I.

Applicant did not object to my consideration of those administrative notice documents. (Tr. 15). Applicant also submitted administrative notice documents pertinent to Iraq, which are included in the record as AE G. The facts administratively noticed are limited to matters of general knowledge that are pertinent to Iraq and Jordan, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant denied all factual allegations contained in the SOR and offered explanations. (Answer.)

Applicant is 35 years old. He was born in Iraq. He attended high school there. In 1995, Applicant left Iraq and initially went to Guam before arriving in Denmark, where he stayed for a couple years. In 2000, he arrived in the United States with a permanent residency card. His parents, who came here previously through the U.S. Safe Haven Act, sponsored his immigration. He attended a technical institute from 2003 to 2005 and obtained a certificate in automotive technology. Applicant became a naturalized U.S. citizen in 2010. He has a current U.S. passport that expires in 2020. He formally renounced his Iraqi citizenship in November 2016. (Tr. 22; GE 2, 5; AE F.)

Applicant's wife was born in Iraq. She is a naturalized U.S. citizen. They have two children, who were born in the United States. (GE 2; AE A.)

Both of Applicant's parents were born and raised in Iraq. They have been U.S. citizens for 10 years. Applicant has three brothers and one sister, all of whom were born in Iraq. They are U.S. citizens. (Tr. 23-24.) These family members resided in the United States before Applicant arrived here. (Tr. 50.)

Applicant's in-laws were born in Iraq, and moved to Jordan within the past year. (Tr. 40.) They are awaiting approval to go to Australia. He speaks to them two or three times a year. (Tr. 28-27.) He last spoke to them three weeks ago, when they called him after his return to the United States from a deployment, as noted below. Applicant's wife has two sisters and two brothers, who were born in Iraq. They reside in Australia. Applicant's wife does not have any relatives or property presently located in Iraq. (Tr. 46-48.)

Applicant has an aunt and uncle who are citizens and residents of Iraq. His uncle works as a chauffeur for an international non-government organization and his aunt is a homemaker. The last time he saw them was in 2013 when he visited Iraq. He spoke to his uncle four or five months ago by phone. Applicant also has a cousin, who is a citizen and resident of Iraq. He owns an automobile business in Iraq. Applicant has contact with him about three times a year. Between 2013 and 2014, Applicant traveled to Qatar four times to purchase automobile supplies and vehicles for his cousin's business because his cousin cannot travel easily outside Iraq. (Tr. 29-30, 41-42.)

None of Applicant's relatives living in Iraq is connected to the Iraqi military. None of them has visited Applicant in the United States. (Tr. 29-31, 45, 52.)

Applicant has held various employment positions, in addition to experiencing periods of unemployment. He has worked as a cashier, a store manager, a building supervisor, a chauffeur, and translator for an immigration court. He was unemployed from 2012 to 2014 and 2010 to 2011. Two years ago, he started working as a linguist for his current employer. (Tr. 19-20; GE 5; AE D.)

Since arriving in the United States in 1995, Applicant has returned to Iraq six times for personal visits. He went in 2001 and 2004 to see his grandparents with whom he lived for many years, and his aunt, uncle, and cousin. In 2008, he went to Iraq to see his family and fiancée. In 2010, he returned to Iraq to get married. In 2012, he celebrated his daughter's baptism there. His in-laws were living in Iraq at that time. In 2013, he visited Iraq for his cousin's wedding. (Tr. 21, 28, 36-39.) He always stayed with his grandparents while they were alive; subsequently, he rented a home during visits. His grandparents passed away prior to 2010. (Tr. 40; GE 5.)

In February 2015, Applicant returned to Iraq while working for the U.S. Government as a linguist. He was there six months, before returning to the United States for leave. While in the United States, his son was born. He returned to Iraq in November 2015 for six months and came home in April 2016 for one month. He then went back to Iraq in May 2016 and stayed until November 2016, when he returned for leave. He was scheduled to go back to Iraq in December 2016. Since starting this position, he has decreased his contact with family members in Iraq. He said he does not see them during deployments because he is not permitted to have contact. He takes his job seriously and keeps a low personal profile. (Tr. 43-45.)

Applicant does not own property or have financial accounts in Iraq. (Tr. 22-23.) He owns a home in the United States. He and his wife have about \$50,000 in savings. They are current on their bills and timely filed all tax returns. (Tr. 26-27.)

Applicant submitted recommendation letters and a certificate of appreciation, attesting to his capabilities and contributions as an interpreter and translator. A major in the U.S. Marines stated that Applicant's language skills, and his knowledge of Iraq and its culture, were an invaluable asset during Applicant's deployment from January through May 2016, and in previous deployments. An Army major spoke of Applicant's achievements and exceptional abilities. A Marine captain praised Applicant's honesty and integrity. These officers consider him responsible and trustworthy. (AE B, C.)

Applicant credibly and sincerely asserted pride in his U.S. citizenship. He is dedicated and enthusiastic about his ability to serve as a cultural advisor and linguist to the U.S. military, as confirmed in the letters of recommendation. (AE B.)

## **Iraq**

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Iraq, as outlined in HE 1, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Iraq. The Islamic State of Iraq and the Levant (ISIL or Islamic State) control some of the country's territory. 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. (HE 1.)

## **Jordan**

Jordan is a small, Middle Eastern country governed by a constitutional monarchy. It has a developing economy. Jordan has a pro-Western foreign policy, and has had close relations with the United States for more than forty years. Torture, arbitrary arrest, prolonged detention, denial of due process, and restrictions on freedom of speech are Jordanian human rights problems. Despite aggressive governmental action against terrorists, the threat of terrorism in Jordan remains high. Jordan cooperates with the United States in fighting international terrorism. Terrorists in Jordan target U.S. interests to exploit and undermine U.S. national security interests. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (HE 2.)

## **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 (AG) 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. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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 the 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 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 concerns relating to the guideline for foreign influence are 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.

AG ¶ 7 describes two 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;<sup>2</sup> 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 has familial connections with his aunt, uncle, and cousin, who are residents and citizens of Iraq. His in-laws are citizens of Iraq and residents of Jordan. These relationships potentially create a heightened risk of foreign pressure or attempted exploitation because terrorists in Iraq or Jordan seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationship with his relatives also creates a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" family members living in Iraq or Jordan. The evidence is sufficient to raise these disqualifying conditions.

After the government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions based on the facts:

(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; 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.

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<sup>2</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, that 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).

In the event terrorists would learn of Applicant's identity and/or presence in Iraq while deployed, his aunt, uncle, and cousin could be placed in positions that would force him to choose between their safety and U.S. interests. However, the possibility of that conflict occurring is diminished because Applicant does not have contact with them while he is in Iraq, and has diminished his overall contacts with them. The likelihood that terrorists in Jordan would learn of Applicant's identity is minimal, as Applicant does not work there and has no other connections to the country. Hence, AG ¶ 8(a) has some application.

AG ¶ 8(b) provides strong mitigation. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." He has lived in the United States since 2000. He became a citizen in 2010. His wife and two young children are U.S. citizens. He owns a home and has financial investments in the United States. His parents and four siblings are naturalized U.S. citizens, residing here. He attended a technical school in the United States. He has worked at various jobs in the United States, including as a translator for an immigration court. He expressed a strong sense of loyalty to the United States and zeal for his job supporting U.S. military forces and missions overseas.

AG ¶ 8(c) has some application to the security concerns raised because Applicant's contacts with his aunt, uncle and cousin are infrequent. He speaks them a few times a year and has not seen his aunt and uncle since 2013. The last time he saw his cousin was between 2013 and 2014. He speaks to his in-laws two or three times a year. The last time was while they were in Jordan, and after Applicant recently returned home from 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.

According to 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 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 facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that warrant further analysis. First, there are significant risks of terrorism and various human rights abuses in Iraq and Jordan. More importantly for security purposes, terrorists in both countries are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant’s aunt, uncle, cousin, and in-laws to obtain such information. Second, Applicant had numerous connections to Iraq before he immigrated to the United States in 1995. Following his birth, he spent his formative years there, amongst family and friends. Third, he maintains some contact with three family members in Iraq, and his in-laws in Jordan.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant’s ties to the United States are much stronger than his ties to family members living in Iraq or Jordan. He is a mature person, who has lived in the United States for 16 years, and has been a naturalized citizen since 2010. His spouse is a naturalized U.S. citizen, as are his two children. His parents and siblings are U.S. citizens and residents. He owns a home in the United States and has an investment account. In his current employment, he provides vital and direct support to the U.S. armed forces as a cultural advisor and translator. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously. He has worked diligently for a defense contractor since 2015 in an important capacity. He jeopardizes his physical safety while working in Iraq. His supervisors assess him as loyal, trustworthy, and responsible. There is no derogatory information about him in the record.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant mitigated the security concerns pertaining to foreign influence. 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:                      FOR APPLICANT

Subparagraphs 1.a through 1.e:    For Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge