



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07294

**Appearances**

For Government: David Hayes, Esq., Department Counsel

For Applicant: *Pro se*

02/01/2017

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for a security clearance is denied.

**Statement of the Case**

On June 21, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on August 25, 2016, and requested a hearing before an administrative judge. The case was assigned to me on December 23, 2016. Applicant requested an expedited hearing and waived the notice requirements. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

4, 2017. I convened the hearing as scheduled on January 11, 2017. The Government offered exhibits (GE) 1 through 13, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on January 19, 2017.

### **Request for Administrative Notice**

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Iraq. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. She was born in Iraq. She married her husband, a U.S. citizen and military member at the time, in Egypt in 2006. Her husband was honorably discharged from the military in 2009. They have no children. They make their home in the United States. Applicant received the equivalent of a bachelor's degree in Iraq in 1999 and completed a General Equivalency Diploma in the United States. She moved to the U.S. in 2007 and became a U.S. citizen in May 2014. She explained that she met the requirements to become a U.S. citizen earlier, but due to the cost she delayed filing an application. She also explained that she had permanent residence status from 2007 to 2011, but that time was not counted toward her citizenship requirement because she was not living in the United States at the time. She received a special immigration visa because of her service with the U.S. armed forces in Iraq.<sup>1</sup>

Applicant began working for U.S. government contractors, so she could provide financial support to her family. She worked for a defense contractor from August 2003 until 2007. She changed employers in 2007 and continued to work for this employer until April 2011, when she moved to the U.S. to be with her husband. She was unemployed for periods, worked part-time for other periods, and went to school until 2014. She was hired by a defense contractor in March 2015, to work as an interpreter for the U.S. military in Iraq. Applicant previously worked for the Iraqi government from 2003 to 2007. From 2005 to 2006, Applicant was required to show up for her Iraqi job one day a month to collect a paycheck. She was working in the Green Zone for a U.S. contractor at the same time. She used her Iraqi employment as a cover so her neighbors would not know that she was working for U.S. forces. In 2007 she resigned from her Iraqi job.<sup>2</sup>

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<sup>1</sup> Tr. 24-30.

<sup>2</sup> Tr. 30-32, 77-78; GE 2.

Applicant held an Iraqi passport that expired in February 2015. She has a U.S. passport, which she has used for international travel since becoming a citizen.<sup>3</sup>

Applicant's mother is a citizen and resident of Iraq. Her mother is a retired teacher and receives a pension from the Iraqi government. From January 2008 to approximately April 2011, Applicant was earning a substantial salary and provided her mother \$1,000 a month in financial support that her mother used for living expenses. Applicant gave her mother \$25,000 in 2010 or 2011, so that her mother could purchase a small house in Iraq to live in. Applicant anticipates that when her mother passes away, she will inherit a share of the property along with her siblings. Applicant testified that she has not sent her mother money since April 2011. Her mother sent Applicant some money on two occasions when Applicant had financial difficulties.<sup>4</sup>

When Applicant is in Iraq she cannot leave the compound. She has not seen her mother since 2011. They talk on the phone regularly when Applicant is in Iraq and less frequently when she is in the United States, due to cost. She maintains regular contact with her mother. Her father is deceased. He was retired from the Ministry of Trade. Applicant explained that the majority of the jobs in Iraq are with the government. She stated that her father was an alcoholic and he never provided sufficient financial support for their family's future.<sup>5</sup>

Applicant's brother is a citizen and resident of Iraq. She has some contact with her brother. He is 44 years old and not married. He lives with their mother. He served in the Iraq army after failing in school. He received a dishonorable discharge. The circumstances of his discharge are unknown. He worked as a mechanic from 2006 to 2007. He now sells spare car parts. Applicant hopes he will move to the United States, but he is hesitant to learn a new language, and told her that at his age he does not want to work hard and start all over. Their mother primarily provides him financial support. Although Applicant has contact with her brother, their relationship is presently strained. She spoke to him about two months ago.<sup>6</sup>

Applicant's sister is 46 years old. She is a citizen and resident of Iraq. She is an employee with a government agency. She will eventually be entitled to a pension from the government after 25 years. She is not married and lives with their mother. She helps support their mother and brother. Applicant and her sister talk to each other by telephone several times a week.<sup>7</sup>

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<sup>3</sup> Tr. 31-33.

<sup>4</sup> Tr. 34-39, 50-51, 67-69.

<sup>5</sup> Tr. 39-42.

<sup>6</sup> Tr. 42-45, 48, 51-52.

<sup>7</sup> Tr. 45-48.

Since 2005, Applicant's mother, brother, and sister have been aware that she is employed by a U.S. government contractor and is assisting the military. She testified that no one except these three family members know that she works for the U.S. government. From 2003 to 2005, they were unaware of her employment because she was in a hostile location, and she did not want them to worry. From 2004 to 2005, during the U.S. surge, while serving with the Marines, she was exposed to dangerous situations. She was in a vehicle accident in which two military members were killed and another sustained a serious injury. Applicant requested a transfer to a less dangerous assignment. When asked on her 2015 counterintelligence-focused security screening questionnaire if she had any concerns about working for the U.S. in Iraq, to include concerns for the safety of her family members, she responded "yes." She told the investigator, "if militant groups find out that I work with Americans, my family in Iraq would be placed in danger."<sup>8</sup> She further indicated that she intended to tell her mother and siblings about her recent employment opportunity, but would not disclose where exactly in Iraq she will be working. She also stated that she would instruct her mother and siblings to keep her information closely guarded.<sup>9</sup>

Applicant has two friends, who are married and are Iraqi citizens and have lived in the United Arab Emirates (UAE) since 2005. The husband is a businessman and the wife is a housewife. They have children and grandchildren. Applicant and the wife grew up on the same street in Iraq and have been lifelong friends. The wife was born in the U.S. when her father was a diplomat assigned to the United States. She visited Applicant in the U.S. in 2012 for about two weeks. Applicant and the wife talk once a month by telephone. Applicant has visited the wife in the UAE during her vacation and when she has a flight layover in the UAE. Applicant knows her friend's husband, but they are not close.<sup>10</sup>

These friends of Applicant are wealthy, and they loaned her \$18,000 so Applicant and her husband could start a small business. She completed repaying the loan in 2015. She no longer has a financial obligation to her friend. Applicant's friend's husband owns an import-export business in the UAE. He inherited much of his wealth. Both husband and wife are aware that Applicant works for a U.S. government contractor. Applicant testified that neither her family nor friends are aware she is applying for a security clearance.<sup>11</sup>

In 2006, before she married, Applicant purchased property in Iraq for \$3,000. She explained that in Iraq there are two options for retirement. One either works for the government for 25 years and receives a pension, or buys gold, such as jewelry, or property to fund their retirement. At the time, Applicant decided to plan for her future

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<sup>8</sup> Tr. 45-50, 76-77, 80-81; GE 3 page 9.

<sup>9</sup> GE 3 at page 9.

<sup>10</sup> Tr. 52-56, 60.

<sup>11</sup> Tr. 56-61, 68-69.

and purchased property as an investment. It is a 300 square foot undeveloped parcel of land. Applicant lost the title to the property and plans to give her brother a power of attorney, so he can obtain a substitute title and then sell the property for her. She had no idea when she purchased the property that she would marry an American and become a U.S. citizen and resident. She is no longer planning to retire in Iraq. She plans on remaining in the United States and retiring. She listed on her March 2015 security screen questionnaire that the value of the land was approximately \$2,000. She has no idea the current value of the Iraqi property. She has no other property or assets in Iraq.<sup>12</sup>

Applicant and her husband own a home in the U.S. that they purchased in 2009. They own two vehicles and a motorcycle. They do not have any outstanding debts. They are saving their money. They have friends in their community. Applicant does not intend on returning to Iraq to live permanently. She explained that her mother is too old to move, so her siblings live with her. Applicant hopes that after her mother passes away her siblings will immigrate to the United States.<sup>13</sup>

Applicant provided letters of recommendation and certificates of achievement from different U.S. military commanders from 2004 to 2008. She is commended for her exemplary service and as a valued colleague to military personnel. Her language skills are applauded. She is considered a valued and productive employee, who has exhibited a strong work ethic and excellent character. She is a trusted team member. It was noted that she worked under dangerous conditions while in Iraq, and specifically having directly supported U.S. combat operations. Her many accomplishments are noted in the letters. She is described as professional, motivated, knowledgeable, and loyal.<sup>14</sup>

## **Iraq<sup>15</sup>**

The United States Department of State warns that U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. It is recommended that they avoid all but essential travel to Iraq. The potential threat to U.S. Government personnel in Iraq is serious and requires them to live and work under strict security guidelines.

The Islamic State of Iraq and the Levant (ISIL) controls a significant portion of Iraq's territory. Within areas of ISIL control, the Iraqi government has little or no ability to control and ensure public safety. Anti-U.S. sectarian militias may threaten U.S. cities and western companies throughout Iraq. Violence and attacks by improvised explosive devices (IED) occur frequently in many areas of the country. There are numerous

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<sup>12</sup> Tr. 61-66, 74-75; GE 3 at page 12.

<sup>13</sup> Tr. 70-76.

<sup>14</sup> AE A.

<sup>15</sup> HE I.

methods of attack including human and vehicle-borne IEDs, mines, mortars, and rockets. Such attacks take place in public venues.

Iraq continues to witness a surge in terrorist attacks, primarily as a result of ISIL. It continues to be the greatest terrorist threat globally, maintaining formidable forces in Iraq, including a large number of foreign terrorist fighters. Despite Iraq's efforts to combat ISIL, there remains a security vacuum in parts of the country.

Human rights violations are predominantly carried out by ISIL. These included attacks on civilians, especially members of other religious and ethnic minorities, women and children. The acts of violence committed by ISIL include killings by suicide bombers, IEDs, execution-style shootings, public beheadings, and other forms of executions. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weaken the Iraqi government's authority and worsen human rights protections.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. 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 conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (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

(e) 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.

AG ¶¶ 7(a) and 7(e) require evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country, as well as each individual family member’s ties, must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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.”<sup>16</sup>

Applicant’s mother, brother, and sister are citizens and residents of Iraq. She has regular contact with all three. In the past, she has provided her mother financial support and gave her money to purchase a home. Her mother has also provided her with financial support. Applicant has a close friendship with a husband and wife who are Iraqi citizens living in UAE. She received a loan from these friends. Applicant owns property in Iraq.

Terrorist activity, the infiltration of ISIL, sectarian hostility, widespread corruption, and lack of transparency at all levels of Iraqi government in addition to its failure to protect human rights is a concern. Applicant’s close relationship with her relatives living in Iraq creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. It also creates a potential conflict of interest. Applicant has close ties with Iraqi friends who live in UAE that could also create a potential foreign influence concern. AG ¶¶ 7(a) and 7(b) have been raised by the evidence. I have considered the value of Applicant’s property in Iraq compared with her assets in the United States. I find that it is not a substantial property interest that could subject Applicant to a heightened risk of foreign influence or exploitation. AG ¶ 7(e) does not apply to the allegation in SOR ¶ 1.e.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

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<sup>16</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).



(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 and 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 interests in favor of the U.S. interests; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant began working for a U.S. defense contractor in 2003 and continued until 2011. She obtained a new job with a defense contractor in 2015. She married a U.S. citizen in 2006 and became a U.S. citizen in 2014. Applicant maintains close ties with her family in Iraq. They are aware that she works for a U.S. contractor. Applicant is concerned for their safety and has told them not to disclose her employment with the United States. Kidnappings and terrorist activity are prevalent in Iraq; hence, I am unable to find that it is unlikely Applicant's would be placed in a position of having to choose between the interests of her family members and the interests of the United States. AG ¶ 8(a) does not apply to her family members. However, because Applicant's friends are residents of the UAE, it is unlikely they would be place in such a position. Therefore, AG ¶ 8(a) applies to the allegations regarding them.

Applicant is close with her family members in Iraq. She speaks with her mother regularly and her sister several times a week and maintains contact with her brother. She hopes her siblings will eventually immigrate to the United States. She has provided her mother financial assistance and her mother has provided it to her. When in Iraq, Applicant is restricted from visiting them because of the security requirements of her job. She has expressed concern that if a militant group were to find out about her ties to the U.S. forces, they would be in danger. Applicant has loyally served U.S. forces in Iraq. However, her close and continuing contact with her family in Iraq and their knowledge that she is serving U.S. forces create a conflict of interest. Her familial ties are too significant to expect her to resolve any conflict of interest in favor of the interests of the United States instead of her family. AG ¶ 8(b) does not apply. Although Applicant has close ties with her Iraqi friends living in the UAE, I find that it is unlikely, due to their residence, that they will be placed in a position that would create a conflict of interest for Applicant. AG ¶ 8(b) applies to them.

AG ¶ 8(c) does not apply to Applicant's family or Iraqi friends because their contact and communication is not casual or infrequent.

## 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old. She was granted a special immigration visa because of her service with U.S. forces in Iraq. She married a U.S. citizen in 2006, and they own a home in the United States. She became a naturalized-citizen in 2014. She worked for U.S. government contractors from 2003 to 2011, and again in 2015 to the present. She was involved in combat operations in 2005. She also has strong familial ties to Iraq where her mother, brother, and sister are citizens and residents. She is in close contact with her sister and mother, and is concerned for their safety if it were known by terrorists that Applicant works for the U.S. Government. I have considered her service under dangerous conditions and the special consideration afforded those facts. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."<sup>17</sup> Although I do not question her service and loyalty to the United States, I find that her strong family ties create an insurmountable burden should a conflict of interest arise or if she were placed in a position of having to choose between her family's interests and the interests of the United States. Therefore, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the foreign influence security concerns.

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<sup>17</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

### **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:

AGAINST APPLICANT

Subparagraphs 1.a-1.c:

Against Applicant

Subparagraphs 1.d-1.i:

For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge