



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-04498
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

10/26/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Alleged drug use and personal conduct security concerns were mitigated or unsupported by the record evidence. However, Applicant did not present sufficient evidence to mitigate foreign influence security concerns. Clearance is denied.

**Statement of the Case**

On or about March 9, 2015, Applicant submitted a security clearance application (SCA) in connection with a prospective job offer to work as a linguist for the U.S. military in Afghanistan. He previously worked for the U.S. military in a similar capacity.

On June 4, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to relatives in Iraq raised a security concern under the foreign influence guideline.<sup>1</sup> The SOR also alleges under guidelines G and E that Applicant used marijuana in 2014 and failed to report such use on his SCA.

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<sup>1</sup> The SOR alleges, in part, under Guideline B that Applicant's familial ties to his sister-in-law (1.e), uncle (1.f), and other extended family members (1.g) pose a security concern. Applicant's relationship and contact with these distant foreign relatives is minimal. The nature of his relationship with these distant relatives is such that it could not serve as a means to influence him. Thus, these allegations are decided for Applicant and will not be further discussed. ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (judge's favorable decision supported, in part, by applicant's lack of a relationship and contact with distant foreign relatives).

On March 7, 2016, Applicant answered the SOR. He admitted the allegations regarding his close relatives in Iraq and that he used marijuana in 2014. He denied the allegation that he deliberately falsified his SCA. He declined the opportunity to present his case at a hearing. Instead, he elected to have his case decided on the written record.

On November 7, 2016, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant nine exhibits (Items 1 – 9) that the Government offers for admission into the record. Applicant submitted a response to the FORM. With his Response, Applicant submitted another copy of his Answer and a new credit report, which reflects a favorable credit score. These matters were collectively marked Exhibit A.

Applicant did not raise an objection to the evidence offered by the Government. He did not present any documentary evidence about his past work as a U.S. Government (USG) contractor. Beyond the credit report, Applicant also did not provide any documentary evidence detailing his professional, personal, and financial ties to the U.S.

On October 1, 2017, after the Hearing Office received confirmation that Applicant remained sponsored for a clearance, I was assigned the case. Without objection, Items 1 – 9 and Exhibit A are admitted into the record.

### **Findings of Fact<sup>2</sup>**

Applicant was born in Iraq. He obtained a student visa and immigrated to the United States in 2006. He then applied for and was granted political asylum in the United States. He became a U.S. citizen in 2013. He attended college in the United States from 2010 to 2012, but did not earn a degree. He is single with no children. He was hired by a defense contractor in 2012, and has twice served in Afghanistan as a linguist for U.S. and coalition forces. He reports that before deploying to Afghanistan he went through counterintelligence (CI) investigations. He also reports that immigration authorities conducted their own background investigation before he was granted asylum and in connection with his citizenship application.

In approximately February 2015, Applicant again applied to work as a linguist in Afghanistan. He states in his Answer that he desires to serve his adopted country, the United States, in this fashion because of the deep love he has for this country, which has done so much for the Kurdish people in Iraq going back to the early 1990s. He also wants to help the Afghan people in their fight against similar forces that have threatened the Kurds throughout the years.

On February 12, 2015, Applicant was interviewed by his prospective employer, a defense contractor. In response to written questions, Applicant reported that he had a number of delinquent debts and he used marijuana twice while in State A, a state that has legalized the use of marijuana. He also reported being arrested and convicted in 2014 for the illegal possession of marijuana. He explained that after leaving State A, he and his brother, a defense contractor with a security clearance, were stopped by police for an

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<sup>2</sup> The information relayed in the fact section is taken from the admitted evidence (Items 1-8 and Exhibit A).

alleged traffic violation. The police then searched Applicant's car and found a marijuana-laced cookie and an open container of alcohol. He was arrested and pled guilty to the drug-related charge, in part, to save his brother from any potential adverse repercussions.

Shortly after the pre-employment screening interview, Applicant submitted an SCA in connection with his employment as a linguist. In response to relevant questions, he again reported his past-due debts and his arrest and conviction on the marijuana-related charge in 2014. He also reported his foreign connections, contacts, and travel. He omitted listing his use of marijuana in 2014 in response to a question asking if he had illegally used any drugs in the past seven years. He explained during a CI interview, which took place on March 9, 2015, that he did not believe he needed to list the marijuana use since he had used it in a state where such use was legal.<sup>3</sup>

During the March 2015 CI interview, Applicant also discussed his relatives in Iraq. His parents, two brothers, and a sister are citizens and residents of Iraq. They live in the Kurdistan area of Iraq. His parents and siblings have no connection to the Iraqi government or other foreign group or entity. Applicant has somewhat regular contact with his parents and siblings in Iraq, and provides them with financial support. He admits in his Answer that he is somewhat closer to one of his siblings in Iraq than the other two, because they worked together for many years. He has provided financial assistance to this sibling in the past. He has informed his parents that he is working as an interpreter in Afghanistan. Applicant's relationship to his immediate family members in Iraq and the financial support he has provided them are alleged as a potential foreign influence security concern at SOR 1.a – 1.d and 1.h.

#### Administrative Notice - The Republic of Iraq.<sup>4</sup>

Iraq is a constitutional parliamentary republic. Iraq continues to develop as a sovereign, stable, and self-reliant country. The U.S. State Department states in its current bilateral fact sheet that the outcome of Iraq's 2014 parliamentary elections generally met international standards of free and fair elections, and led to the peaceful transition of power. The State Department further states in the current fact sheet that Iraq has functioning government institutions including an active legislature, is playing an increasingly constructive role in the region, and has a bright economic future as oil revenues surpass pre-Saddam production levels with continued rapid growth to come.

The December 2011 departure of U.S. troops from Iraq marked a milestone in the U.S.-Iraqi relationship. Iraq is now a key partner of the United States. The U.S. maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement.

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<sup>3</sup> The SOR alleges that Applicant submitted his SCA "on or about February 23, 2015," however, the only date on the SCA submitted with the FORM (Item 3) is March 9, 2015 – the same day as the CI interview. Whether Applicant submitted the SCA on February 23<sup>rd</sup> or March 9<sup>th</sup> is immaterial to my analysis and finding.

<sup>4</sup> See *generally* Item 9, as updated by current information contained in Appellate Exhibit I (publically-available U.S. State Department documents).

The U.S. State Department notes in its most recent human rights report that civilian authorities were not always able to maintain effective control of all security forces operating within Iraq. Furthermore, violence continued to divide the country and severe human rights problems were widespread.

The State Department warns U.S. citizens against travel to Iraq because of continued instability and threats against U.S. citizens. Travel within Iraq remains very dangerous, and the ability of the U.S. embassy to assist U.S. citizens facing difficulty is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. The U.S. government considers the potential personal security threats to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines.

Recent U.S. State Department press releases recount the successes of and congratulate Iraqi security forces and Kurdish Peshmerga against ISIS, to include the recent liberation of Mosul. A press release on October 17, 2017, notes U.S. concerns over recent reports of clashes near disputed areas near Kirkuk, as follows:

In order to avoid any misunderstandings or further clashes, we urge the central government to calm the situation by limiting federal forces' movements in disputed areas to only those coordinated with the Kurdistan Regional Government. We are encouraged by Prime Minister Abadi's instructions to federal forces to protect Iraqi Kurdish citizens and to not provoke conflict. The reassertion of federal authority over disputed areas in no way changes their status – they remain disputed until their status is resolved in accordance with the Iraqi constitution. Until parties reach a resolution, we urge them to fully coordinate security and administration of these areas. To that end, all parties should engage in dialogue now on the basis of the Iraqi constitution, as Prime Minister Abadi offered and the Kurdistan Regional Government accepted publicly. The United States remains committed to a united, stable, democratic, and federal Iraq, and committed to the Kurdistan Regional Government as an integral component of the country.

### **Law, Policies, and Regulations**

This case is decided under Executive Order (E.O.) 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) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “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. 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. AG ¶ 2.

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 must remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.<sup>5</sup>

Any doubt raised by the evidence must be resolved by a judge in favor of the national security. AG ¶ 2(b). See also SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “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

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<sup>5</sup> However, a judge’s mere disbelief of an applicant’s testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

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**

Foreign contacts and interests . . . are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. (AG ¶ 6.)

Individuals are not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing a person's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.<sup>6</sup>

In assessing the security concerns at issue, I considered all disqualifying and mitigating conditions listed under Guideline B, including the following:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

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 . . . and the interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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

AG ¶ 8(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.

An applicant with relatives 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>7</sup> However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.<sup>8</sup> Moreover, when an applicant’s foreign relatives reside in a country where elements hostile to the United States and its interests operate, such an applicant faces a very heavy burden in mitigating security concerns raised by their connections to and contacts with foreign relatives.<sup>9</sup>

Here, Applicant’s relationship to his parents and siblings residing in Iraq is not casual. Notwithstanding recent successes against ISIS, Iraq remains a dangerous country and it is far from a mere hypothetical concern that anti-U.S. elements could attempt to influence Applicant through his family members in Iraq. Although Applicant faced the same risks when he previously volunteered to work as a USG contractor, he provided insufficient evidence from which I could draw a favorable conclusion about the above-listed mitigating conditions and his current security clearance eligibility. Of note, the record contains no evidence about his past work for the U.S. military, including whether he had access to sensitive U.S. information and how he handled such information.<sup>10</sup> Also, there is limited information in the record regarding his current relationship with his parents and siblings in Iraq, and about his present ties to the United States. In light of the heightened security concerns and the limited evidentiary record, I find that foreign influence security concerns remain.<sup>11</sup>

However, this adverse security assessment is *not* a comment on Applicant’s patriotism or loyalty. Instead, it is an acknowledgment that people may act in

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<sup>7</sup> ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

<sup>8</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

<sup>9</sup> ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

<sup>10</sup> A judge should obviously consider an applicant’s service as a translator in weighing security concerns. However, such evidence is not dispositive in any given case. See ISCR Case No. 12-08823 at 3 (App. Bd. May 6, 2016) (in upholding favorable decision, the Appeal Board noted that judge’s findings about applicant’s “cooperation with the U.S and the considerable hardship and danger he faced as a result of that cooperation” was fully supported by the record evidence).

<sup>11</sup> In reaching this adverse conclusion, I considered the whole-person concept, including the favorable inferences to be drawn from Applicant’s work as a defense contractor in a combat zone. See *generally* AG ¶ 2. I also considered that Applicant’s brother, who presumably would have similar familial ties to Iraq, was reportedly granted a security clearance. However, each case must be decided on its own merits. Furthermore, I am not privy as to what evidence applicant’s brother presented in mitigating the heightened security concerns raised by his familial ties to Iraq.

unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

### **Guideline H, Drug Involvement and Substance Misuse**

The use of marijuana by a prospective or active clearance holder raises concerns about the person's judgment, reliability, trustworthiness, and ability or willingness to comply with laws, rules, and regulations. See AG ¶ 24. The record evidence reflects that Applicant's use of marijuana was an aberrational event that occurred over three years ago and has not since been repeated. Applicant now clearly understands that such drug use, even in a state or a foreign country that has legalized the use of marijuana, remains a security concern for the federal government and could result in the denial or revocation of a security clearance. Based on the record evidence, it is unlikely that similar security-significant conduct will recur. See AG ¶ 26(a). Accordingly, I find that Applicant met his burden of proof and persuasion in mitigating the Guideline H security concern.

### **Guideline E, Personal Conduct**

The security clearance process relies on the honesty and candor of all applicants. It generally begins with the answers provided by an applicant in the security clearance application and continues throughout the investigative and adjudicative stages of the security clearance process. An applicant who deliberately omits or misrepresents material facts during the clearance process exhibits conduct inconsistent with the judgment, reliability, and trustworthiness expected from all prospective and active clearance holders. See AG ¶ 15. See *also* SEAD-4, Appendix A, ¶ 2(i). However, the omission of material information standing alone is not enough to establish that an applicant committed a deliberate falsification.

The facts and circumstances surrounding Applicant's failure to list his past marijuana use on the SCA show that it was not deliberate. First, Applicant revealed this information to his employer, a major defense contractor, during his pre-employment screening. This interview took place *before* Applicant submitted his SCA. Second, Applicant's explanation for not listing his marijuana use was logical, reasonable, and fully consistent with the record evidence. The relevant question on the SCA asked Applicant about past "illegal drug use." Applicant's marijuana use was legal under state law. Furthermore, he volunteered the information about his past marijuana use in response to a written question on the prescreening employment application, which did not contain the limiting language contained in the SCA. Third, Applicant's disclosures of other material information on the SCA and candor during the course of the ensuing investigation, which took place almost immediately after he submitted the SCA, fully demonstrate that he was not attempting to hide or mislead the Government about his past marijuana use.

In short, the record is replete with evidence that Applicant was not attempting to hide or misrepresent his past drug use. He did not intend to falsify his SCA when he omitted the information about his past marijuana use. The Government failed to meet its burden of proof.



## 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.d, 1.h:	Against Applicant
Subparagraphs 1.e – 1.g:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

## Conclusion

In light of the record evidence, it is not clearly consistent with the interest of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is denied.<sup>12</sup>

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Francisco Mendez  
Administrative Judge

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<sup>12</sup> In light of Applicant's past work as a linguist and the obvious need of the DoD for persons with such skills, I also considered the exceptions listed in SEAD-4, Appendix C. However, the applicability of this Appendix to contractor cases adjudicated under the Directive remains a question. Furthermore, even if applicable, no implementation guidance has been issued. Thus, it would be inappropriate for a judge to issue a ruling on this issue at this time.