



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-04736
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate foreign influence security concerns. Clearance is denied.

Statement of the Case

On August 27, 2014, Applicant submitted a security clearance application in connection with his prospective employment as a contractor (linguist) for the U.S. military in Iraq. He had worked for the U.S. military in a similar capacity from 2004 to 2011. He reported on the application and discussed with a security clearance investigator that his siblings remained in Iraq and he spoke with them on a regular basis. (Items 3-4.)

On December 30, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to and contact with his siblings in Iraq raised a security concern under the foreign influence guideline. Applicant answered the SOR on April 20, 2016, admitting the allegations that his siblings are residents and citizens of Iraq.¹ He declined the opportunity to present his case at a hearing. Instead, he elected to have his case decided on the written record. (Items 1 and 2.)

¹ Applicant denied the allegation that his then-girlfriend, now wife was a citizen and resident of Iraq. He provided documentation showing that she is a naturalized U.S. citizen. This foreign influence allegation is decided in Applicant's favor and will not be further discussed.

On December 14, 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 five exhibits (Items 1 – 5) that the Government offers for admission into the record. Applicant received the FORM and accompanying exhibits on December 24, 2016. (Appellate Exhibit I.) He was given 30 days to respond. He did not submit a response, raise an objection to the evidence offered by the Government, or present any evidence about his past work as a U.S. Government (USG) contractor, his siblings in Iraq, or professional, familial, and financial ties to the United States.

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 – 5 are admitted into the record.

Findings of Fact²

Applicant was born in Iraq. In approximately 1990, he fled Iraq because of religious persecution. He was granted asylum by the United States in approximately 1997, and became a U.S. citizen in 2002. He earned a technical degree from a U.S. school in 1999. He and his first wife had three children. All three children were born in the United States. They divorced in 2012, and he pays child support. Applicant re-married in 2015.

Applicant worked as a USG contractor in Iraq, translating for U.S. military forces from approximately 2004 to 2011. He reports receiving a security clearance in approximately 2003.

Applicant's four siblings are Iraqi citizens, living in Iraq. His brother is a retired driver and his sisters are widowed. He speaks with his siblings somewhat regularly (monthly to quarterly). It is unclear from the record how Applicant's siblings financially support themselves.

Administrative Notice - The Republic of Iraq.³

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

² The information relayed in the fact section is taken from the admitted evidence (Items 1-4).

³ See *generally* Item 5, as updated by current information contained in Appellate Exhibit II (publically-available U.S. State Department documents).

vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement.

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.

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, ¶ E3.1.32.1.⁴

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 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.)

A person is not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing an

⁴ 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).

individual's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.⁵

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

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."⁶ However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.⁷ 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

⁵ 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).

⁶ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

⁷ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

very heavy burden in mitigating security concerns raised by their connections to and contacts with foreign relatives.⁸

Here, Applicant's relationship to his family members residing in Iraq is not casual and the security risk posed by his connection to them is far from a mere hypothetical concern. Although Applicant faced the same risks when he worked as a USG contractor in Iraq before 2011, he provided no 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. Also, there is limited information in the record regarding his current relationship with his siblings in Iraq and ties to the United States. In light of the limited evidentiary record, I find that foreign influence security concerns remain.⁹

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 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).

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 (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant

⁸ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

⁹ In reaching this adverse conclusion, I considered the whole-person concept. See *generally* AG ¶ 2. See *also* SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).

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.¹⁰

Francisco Mendez
Administrative Judge

¹⁰ In light of Applicant's past work as a USG contractor in Iraq, unique language skills, and the obvious need of the military 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.