



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-04902
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2017

---

**Decision**

---

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted security clearance applications (SCAs) on September 11, 2013, and November 24, 2014. On September 22, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and E. The DOD CAF acted under Executive Order (Exec. Or.) 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 by the DOD on September 1, 2006.<sup>1</sup>

---

<sup>1</sup> Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on October 21, 2016, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on November 23, 2016. On November 28, 2016, a complete copy of the file of relevant material (FORM), consisting of nine items, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 5, 2016, and did not respond. The case was assigned to me on October 1, 2017.

On October 18, 2017, I issued an order returning the case to Department Counsel for further consideration and possible amendment of the SOR. I issued the order because Department Counsel's written submission of the case set out multiple instances of omissions and contradictory explanations by Applicant, none of which were alleged in the SOR. The order required that Department Counsel serve any amendment on Applicant, and it stated that Applicant would be given an opportunity to request a hearing on all the allegations in the SOR. (Hearing Exhibit I.) A copy of the order was sent to Applicant.

On October 30, 2017, Department Counsel moved to amend the SOR by withdrawing SOR ¶ 1.c and adding SOR ¶ 2.b through 2.f. I granted the motion to amend the SOR. Applicant responded to the amendments on November 8, 2017, but he did not request a hearing.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about Iraq. The request and supporting documents are included in the record as FORM Item 9. I took administrative notice as requested by Department Counsel. On my own motion, and without objection from either party, I also took administrative notice of relevant facts in the U.S. Department of State fact sheet, "U.S. Relations with Iraq," dated April 28, 2017; an updated U.S. Department of State travel warning for Iraq, dated June 14, 2017; and an updated U.S. Department of State Country Report of Human Rights Practices, dated March 29, 2017. These documents are included in the record as Items 10, 11, and 12. At Department Counsel's request, I also took notice of relevant facts in an updated July 2017 country report on terrorism, and this document is included in the record as Item 13. The facts administratively noticed are set out below in my findings of fact.

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

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.d. He denied the allegations in SOR ¶¶ 1.b, 1.c, and 2.a. In response to the amended SOR, he denied the allegations in SOR ¶ 2.b through 2.f and submitted explanations. His admissions are incorporated in my findings of fact.

---

<sup>2</sup> Applicant's personal information is extracted from his security clearance applications (Items 3 and 4) unless otherwise indicated by a parenthetical citation to the record.

Applicant is a 44-year-old linguist employed by a defense contractor since September 2013 and deployed to Kuwait in support of the U.S. Army. He previously was employed by defense contractors from July 2008 to September 2013 as a role player for military training. He has never held a security clearance.

Applicant is a Kurdish Iraqi born in Iraq. He completed high school in Iraq but has no college education. He married a Kurdish Iraqi in August 1995. His wife came to the United States in 1996 to join her father, who was a conscripted Iraqi soldier who defected to U.S. forces in Kuwait in 1991 and came to the United States in 1992. She became a U.S. citizen on a date not reflected in the record.

Applicant paid a smuggler to take him from Iraq to the United Kingdom in 2002, and he was given refugee status. Sponsored by his wife, he came to the United States in February 2006 and became a U.S. citizen in June 2009. He has a nine-year-old son who is a native-born U.S. citizen. He and his wife own the marital home, and his wife owns another home that is a rental property. They have paid off the mortgage loan on the rental property. (Item 8 at 7.) The value of their properties is not reflected in the record.

SOR ¶ 1.a alleges that Applicant's mother and three sisters are citizens and residents of Iraq. Applicant admitted this allegation. He talks to his mother by telephone four or five times a month. He is uncomfortable talking about sensitive matters with his mother, because he is concerned about her safety. (FORM Item 6 at 11-12.) His mother and sisters are not employed outside the home and have no connection to the Iraqi government. (FORM Item 8 at 10.) Applicant's brother resides in the United Kingdom, and his connection to Iraq is not alleged in the SOR.

Applicant's father is deceased. In a security interview in October 2013, he told the investigator that his father was an electrician, had never served in the Iraqi military, and passed away from illness in 1986. (Item 8 at 10-11.) In a security interview in December 2013, he told the investigator that his father served in the Peshmerga, a Kurdish military force then fighting against the Iraqi government, and that he was killed by the Iraqi government in 1985. He told the investigator that he and his family were detained in a camp by the Iraqi government for six or seven months because their father was in the Peshmerga. (Item 8 at 24-25.) Applicant's conflicting accounts of his father's death are not alleged in the SOR.

SOR ¶ 1.b alleges that Applicant shares an ownership interest in two homes and two parcels of land in Iraq. In both SCAs, Applicant answered "No" to questions whether he had any foreign financial interests and whether he owned any foreign real estate. (Item 3 at 34; Item 4 at 34.) In a security interview in October 2013, he told an investigator that his mother (now 71 years old) lives in a home that was his deceased father's, that the home was now his mother's, and that under Iraqi law, she would need the approval of Applicant and his siblings to sell it. (Item 8 at 15.) The estimated value of this property is about \$80,000 to \$90,000. His mother also owns a former family residence that is now a rental property worth about \$25,000 to \$30,000. (Item 8 at 27.)

In a subsequent interview in January 2014, Applicant told an investigator that he was not an owner of the property, but that the home is owned by the family, which includes Applicant, his mother, his brother, and his three sisters. (Item 8 at 27.) In December 2014, he was interviewed again and told an investigator that his mother owns a home in Iraq and that he and his siblings would inherit the home upon her death. During this interview, he estimated that his mother's residence is worth about \$200,000 and the rental property is worth about \$15,000. (Item 5 at 1.) He believes that, under Iraqi law, Applicant and his brother would receive twice as much as their three sisters if they inherited the property and it were sold. He told the investigator that he does not rely on his potential inheritance to support himself and his family, and that loss of the property would not cause undue hardship for his mother because she could live with one of her children. (Item 8 at 27.) When Applicant answered the SOR in September 2016, he denied having any financial interest in the property.

SOR ¶ 1.d alleges that Applicant maintains a close and continuing contact with a high school friend who is a citizen and resident of Iraq. In the October 2013 interview, Applicant stated that he had telephonic contact with his friend two or three times a year. The friend is disabled but is supported by his co-ownership of a family-owned transportation business. The friend is not associated with any foreign government. (Item 8 at 12.) Applicant admitted this allegation in his answer to the SOR, but explained that he no longer maintains contact with this friend.

SOR ¶ 2.a alleges that Applicant intentionally lied to a security investigator in October 2013 by telling the investigator that he and his wife were not related by blood. Applicant denied this allegation in his answer to the SOR, stating that he misunderstood the question he was asked during the interview. The summary of the October 2013 interview reflects that he told an investigator that he and his wife were not related to each other, that it was not uncommon in the Muslim culture for relatives to marry, but that was not the case with Applicant and his wife. (Item 8 at 5.) In the December 2013 interview, he told an investigator that he and his wife are distant cousins but not first cousins, and he does not know how closely related they are to each other. He explained that he said in the October 2013 interview that he and his wife were not related, because in American culture it is not normal and "sounds bad" to marry a cousin, and he did not want to look bad. (Item 8 at 21-22.)

The amended SOR ¶¶ 2.b and 2.c alleged that Applicant falsified his September 2013 and November 2014 SCAs by deliberately failing to disclose that he was a dual citizen of Iraq and the United States. In both SCAs, he answered "No" to the Question 10, asking, "Do you now or have you **EVER** held dual/multiple citizenships?" (Bold capital letters in original document.) In the October 2013 interview, Applicant told the investigator that he had had an Iraqi identification card before becoming a U.S. citizen. He told the investigator that he was required to surrender his identification card and Iraqi passport when he entered the United Kingdom, and the documents were never returned to him. (Item 8 at 6.) During the December 2013 interview, he told the investigator that he had left his Iraqi identification card with his mother in Iraq, and he used it while in Iraq for personal safety, because it would be dangerous to be stopped

by Iraqi authorities and identified as a U.S. citizen. (Item 8 at 15.) In his answer to the amended SOR, Applicant stated that he answered “No” to the question about dual or multiple citizenship because he had never applied for an Iraqi passport before leaving Iraq in 2000.

The amended SOR ¶¶ 2.d and 2.e alleges that Applicant falsified both SCAs by deliberately failing to disclose his service in the Iraqi Army from 1993 to 1995. In both SCAs, Applicant answered “No” to Question 15, asking, “Have you **EVER** served as a civilian or military member in a foreign country’s military, intelligence, diplomatic, security forces, militia, other defense force, or government agency?” (Item 3 at 19; Item 4 at 19.) In his security interview in October 2013, he stated that he served as a medic in the Iraqi Army from about 1993 through 1995, and that he failed to disclose his foreign military service due to an oversight. (Item 8 at 6-7.) However, in a second SCA in November 2014, and in a screening questionnaire in December 2014, he again answered “No” when asked if he had ever served in any military, paramilitary, intelligence, security, police organization or foreign political party. (Item 4 at 19; Item 6 at 5.) In his answer to the amended SOR, he stated that he mistakenly answered “No” to the question because this was the first time he submitted an SCA and he had a hard time understanding many of the questions.

The amended SOR ¶ 2.f alleges that Applicant attempted to influence a former co-worker’s responses to investigators. During the December 2013 interview, Applicant was asked if he contacted anyone who might be questioned as a potential reference and attempted to influence them to say only favorable things about him. He told the investigator that he contacted a former friend and co-worker from a previous employment. The co-worker had loaned him money on one occasion, but they had since become estranged because of a disagreement about work assignments. He asked the former co-worker not to say anything dishonest or derogatory because of their previous disagreements. He told the co-worker that the investigation was very important, and the co-worker assured him that he would be honest. In Applicant’s answer to the amended SOR, he stated that he did not tell his co-worker friend about the purpose of the investigation, but he did tell him that if he was contacted he should tell the truth. (Item 8 at 17, 23-24.)

A few days before the October 2013 security interview, Applicant was cited in October 2013 for gambling in an authorized location. He told the investigator that he was watching a football game on television in a place that had slot machines, and he was not gambling, but the police cited everyone present for unauthorized gambling. (Item 8 at 13.) In the December 2013 security interview, he was questioned further about the citation. He told the investigator that the citation was dismissed. He admitted that he had put \$40 in the slot machine before the police arrived, but he told the investigator that he did not intentionally lie by stating he was not gambling in the October 2013 interview, because he had already lost his money and was not gambling at the moment when the police arrived. (Item 8 at 17.) The gambling citation and Applicant’s explanations are not alleged in the SOR.

Iraq is a constitutional parliamentary republic. The 2014 parliamentary elections generally met international standards for free and fair elections. Iraq's security forces include the regular armed forces and domestic law enforcement agencies; the Popular Mobilization Forces (PMF), a state-sponsored military organization composed of nearly 60 predominantly Shia components; and the Peshmerga, the Iraqi Kurdistan Regional Government's principal military force. Civilian authorities are not always able to maintain effective control of all security forces.

The United States is committed to building a strategic partnership with Iraq. Iraq is a key partner for the United States in the region and a voice of moderation and democracy in the Middle East. It has a functioning government, is playing a constructive role in the region, and has a bright economic future. The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues. None of the administrative notice documents indicate that government of Iraq targets the United States for economic or military intelligence, although it is likely that various terrorist and insurgent groups seek military intelligence regarding U.S. military units operating in Iraq.

Numerous terrorist and insurgent groups are active in Iraq, including ISIS and anti-U.S. sectarian militias. The U.S. government considers the potential security threats to U.S. personnel sufficiently serious to require them to live and work under strict security conditions. The U.S. Department of States warns U.S. citizens against all travel to Iraq because it is extremely dangerous.

An overwhelmingly number of human-rights abuses were committed by ISIS, including attacks on civilians. However, human-rights abuses by Iraqi civilian authorities and other state-sponsored organizations also have occurred. They included disappearances; cruel and degrading treatment or punishment; hard and life-threatening conditions in detention and prison facilities; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; limitations on freedom of expression; social, religious, and political restrictions in academic and cultural matters; and abuse of women and ethnic, religious and racial minorities.

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge

applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

## **Analysis**

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

The original SOR alleged that Applicant's mother and three sisters are citizens and residents of Iraq (SOR ¶ 1.a); that Applicant shares ownership interest with his

mother and siblings in two homes and two parcels of land in Iraq (SOR ¶ 1.b); that Applicant maintains and uses an Iraqi identification card when traveling to and within Iraq (SOR ¶ 1.c); and that Applicant maintains close and continuing contact with a high school friend who is a citizen and resident of Iraq (SOR ¶ 1.d). SOR ¶ 1.c was withdrawn when the SOR was amended.

Applicant's admissions establish SOR ¶ 1.a. SOR ¶ 1.b is not established, because a possible inheritance does not equate to an ownership interest. SOR ¶ 1.d is not established because Applicant no longer has contact with his high school friend.

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property 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 maybe 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. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The evidence supporting SOR ¶ 1.a establishes the following disqualifying conditions under this guideline:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

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; and

When foreign family members are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant provided little information about his sisters, and his brother's connections to Iraq are not at issue. However, Applicant is close to his mother and worries about her safety.



AG ¶¶ 7(a) and 7(f) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions 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. The risks to Applicant’s mother and his sisters posed by terrorist and insurgent groups in Iraq are sufficient to establish the heightened risk in AG ¶¶ 7(a) and 7(f) and the potential conflict of interest in AG ¶ 7(b).

The following mitigating conditions are potentially applicable:

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, group, organization, or government 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.

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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the

country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 8(a) is not established, for the reasons set out in the above discussion of AG ¶ 7(a). AG ¶ 8(b) also is not established. Applicant has strong and long-standing ties to the United States. His wife has lived in the United States since 1996 and is a U.S. citizen. He fled from Iraq to the United Kingdom in 2002, came to the United States in 2006, and became a U.S. citizen in 2009. His son is a native-born U.S. citizen. He and his wife own their family home and a rental property in the United States. He has no assets in Iraq. He has worked for defense contractors for nine years. However, he is close to his mother and has deep concerns about her safety. His contradictory statements throughout the security clearance process and reluctance to disclose adverse information about himself demonstrate a high level of self-interest and reluctance to disclose information that might embarrass him, risk his future employment, or jeopardize a security clearance. He has not convinced me that he will protect classified or sensitive information if doing so would risk embarrassment, jeopardize his prospects of future employment, or would endanger his mother or immediate family members.

AG ¶ 8(c) is not established. Applicant has regular contact with his mother. The evidence is sparse regarding his contacts with his sisters, but he has not rebutted the presumption that his contacts with them are not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

## **Guideline E, Personal Conduct**

The amended SOR alleges multiple falsifications during the security clearance process and efforts to undermine the integrity of the security investigation. The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility: . . . (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The following disqualifying condition is relevant to Applicant's answers in his two SCAs, alleged in SOR ¶¶ 2.b-2.e, regarding dual or multiple citizenships and foreign military service:

AG ¶16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

An act of falsification has security significance independent of the underlying conduct. See ISCR Case No. 01-19278 at 7-8 (App. Bd. Apr. 22, 2003). The mitigation of the underlying conduct has little bearing on the security significance of the falsification, particularly where there are multiple falsifications. ISCR Case No. 08-11944 at 3 (App. Bd. Aug 15, 2011).

Applicant's background and education would not ordinarily qualify him to understand the nuances and technical aspects of dual citizenship, and it would be reasonable and plausible for him to believe that his Iraqi citizenship was terminated when he became a U.S. citizen. His contradictory statements about whether he had an Iraqi passport when he fled from Iraq to the United Kingdom are relevant to his overall credibility, but they do not establish that he knew he held dual citizenship at any time. Thus, I conclude that SOR ¶¶ 2.b and 2.c are not established.

On the other hand, Applicant has presented no plausible and credible explanation for failure to disclose his foreign military service. Thus, I conclude that SOR ¶¶ 2.f and 2.e are established, and they are sufficient to raise the disqualifying condition in AG ¶ 16(a).

The following disqualifying condition is potentially relevant to Applicant's statement to a security investigator, alleged in SOR ¶ 2.a, that he and his wife were not "related," i.e., blood relatives:

AG ¶16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a

national security eligibility determination, or other official government representative.

The issue is whether the fact that Applicant and his wife are distant cousins is “relevant” to determining whether his marriage affected his vulnerability to foreign influence. His wife was a U.S. citizen at the time of Applicant’s interview in October 2013. The fact that he and his wife were distant cousins had no impact on the security investigation. It did not tend to prove or disprove a matter at issue. Thus, it is not “relevant” within the meaning of this disqualifying condition.<sup>3</sup> I conclude that AG ¶ 16(a) is not established.

The following disqualifying condition is potentially relevant to the allegation in SOR ¶ 2.f that Applicant attempted to influence a former co-worker’s responses to investigators:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. . . .

This disqualifying condition is not established. Applicant voluntarily disclosed his contact with a former co-worker during the December 2013 interview. His description of the conversation falls short of an attempt to influence the co-worker’s responses to investigators.

Applicant’s contradictory statements regarding his father’s military service, the circumstances of his father’s death, his possession of an Iraqi identification card, and citation for illegal gambling are not alleged in the SOR and may not be an independent basis for denying his application for a security clearance. However, they may be considered to assess his credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether he has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the unalleged instances of falsification for these limited purposes.

---

<sup>3</sup> “Relevant” means “tending to prove or disprove a matter in issue.” Garner, *A Dictionary of Modern Legal Usage*, 2<sup>nd</sup> ed., 1995. It has essentially the same meaning as “material” in 18 U.S.C. ¶ 1001. See ISCR Case No. 03-02486 at 3 (App. Bd. Aug. 31, 2004).

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(a) is not fully established. Applicant corrected the omissions in his September 2013 SCA a month later during a security interview. However, he repeated the omissions in a November SCA and a screening interview in December 2014.

AG ¶ 17(c) is not established. Applicant's omissions undermined the integrity of his security clearance adjudication. They were numerous, and did not occur under unique circumstances.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).<sup>4</sup> I have incorporated my comments under Guidelines B and E my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d).

Applicant has a history of contradictory statements and intentional concealment of potentially embarrassing information or information that might adversely affect his application for a security clearance. After weighing the disqualifying and mitigating conditions under Guidelines B and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his family ties to Iraq and lack of candor during the adjudication of his application for a security clearance.

---

<sup>4</sup> The factors are: (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.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Withdrawn
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Subparagraphs 2.d-2.e:	Against Applicant
Subparagraph 2.f:	For Applicant

### **Conclusion**

It is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge