



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-05694
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

06/26/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate foreign influence security concerns raised by her limited contact with and connection to relatives residing in Iraq. Clearance is granted.

Statement of the Case

On May 9, 2017, the Department of Defense (DoD) issued to Applicant a Statement of Reasons (SOR) alleging security concerns under the foreign influence guideline. Applicant answered the SOR and requested a hearing, which was scheduled for April 24, 2018.¹ Applicant testified at the hearing, and the exhibits offered by the parties were admitted into the administrative record.² The transcript of the proceeding was received on May 4, 2018.³

¹ See Appellate Exhibit II (scheduling correspondence).

² Government Exhibits 1 and 4 – 6, Applicant's Exhibits A – G. Department Counsel withdrew Exhibits 2 and 3 for identification.

³ After the hearing, I concluded that the evidence warranted a decision in Applicant's favor. I informed the parties that, unless an objection was raised, I intended to fairly, quickly, and efficiently resolve the case through summary disposition. ISCR Case No. 15-03176, n.2 (App. Bd. May 26, 2017) (benchmark for summary disposition). Department Counsel objected. Appellate Exhibit V.

Findings of Fact

Applicant, 60, was born in Iraq. She graduated and earned an undergraduate degree from a college in the United Kingdom in 1979. She and her former husband divorced in 1987. She has one living child, who is a permanent U.S. resident. Her daughter is married, and resides with her spouse and three children in the United States. Applicant resides with them. Applicant has saved over \$200,000 and intends to purchase a home in the United States close to where her daughter and grandchildren live.⁴

From 2004 to 2006, Applicant worked for an Iraqi company that did work for the U.S. military. While she was in the United States for training, she was told of death threats that were made against her and her manager. Consequently, she applied for and was granted asylum. She was then hired by the U.S. military as a linguist. She submitted an application for a position of trust, which she was granted before being assigned to assist the U.S. military in Iraq. She worked in Iraq as a U.S. military linguist from 2007 to 2009, during which time she was privy to sensitive information.⁵

Due to the nature of Applicant's work for the U.S. military in Iraq, she worked under an assumed name. U.S. military officers who served with Applicant during this period submitted letters attesting to her professionalism, trustworthiness, reliability, integrity, loyalty, and "irreproachable character."⁶ One U.S. military officer wrote that Applicant's "professionalism and interpretation accuracy has been instrumental in counterinsurgency efforts . . . she is one of the first interpreters to perform this job at one of the most arduous forward operating bases and she has done it superbly."⁷

From 2009 to 2013, Applicant worked in real estate in the United States and as a salesperson for major U.S. retailers. She owned and managed three properties in State X before selling them and moving to State Y, where her daughter and her family reside. Since 2015, Applicant has been employed as a linguist in Iraq by a defense contractor. She went through counterintelligence (CI) screening before beginning her job, and is currently assigned to support a CI team working in Iraq. A U.S. military member provided the following assessment of Applicant's work for the team:

[Her] work performance has been nothing but exceptional, and she has consistently shown a willingness to take on additional work . . . [Her] extensive knowledge of Iraqi culture, as well as the villages and neighborhoods surrounding [X location], have greatly assisted [CI team] members in their CI/Force Protection screening efforts. . . . [She] has shown herself to be one of our most professional and dedicated linguists.⁸

⁴ Transcript (Tr.) 16-18, 32-42; Exhibit C.

⁵ Tr. 16-18, 32-42; Exhibit 4; Exhibit 5; Exhibit C.

⁶ Exhibit B at 1.

⁷ Exhibit B at 2.

⁸ Exhibit A.

Another CI team member wrote that Applicant “was a vital member of our team . . . working tirelessly to help the [team] conduct hundreds of screenings.”⁹ Applicant’s direct supervisor stated:

I know that [Applicant] has worked on numerous jobs with sensitive information. I have never known her to speak about the details of any case with anyone. [She] is always very respectful of privacy, classified information, rules and restrictions. [Her] responsibilities include supporting senior U.S. and Iraqi military officers by interpreting, translating, and transcribing. [She] is the most responsible and trustworthy member of my staff. With over sixty linguists working here, [she] is my first among equals. . . . I have always trusted [her] with sensitive information and I have never found a reason to doubt or question her.¹⁰

In 2014, Applicant became a U.S. citizen. She only holds a U.S. passport. She submitted a letter of intent not to obtain foreign citizenship or foreign passport subject to automatic loss of any security clearance eligibility granted. In the same document, she pledged to have minimal contact with foreign persons outside of her official duties.¹¹

Applicant has four siblings who remain residents and citizens of Iraq. She has limited to almost no contact with these siblings. She last saw one of her sisters four years ago when the sister visited Applicant in the United States. When Applicant became aware that the spouse of one of her sisters living in Iraq had died, she sent her sister a text message expressing her condolences for her sister’s loss.

Applicant has no assets or properties in Iraq. She recently relinquished her 1/20th financial interest in a piece of property in Iraq that her late father left to her and several other family members upon his death. Applicant’s brother had managed the inheritance after her father died. Applicant reported and discussed her foreign relatives, inheritance, and travel to Iraq when she went through CI screening three years ago before she started her current job as a U.S. military linguist in Iraq.¹²

Administrative Notice - The Republic of Iraq.¹³

Iraq is a constitutional parliamentary republic, which continues to develop as a sovereign, stable, and self-reliant country. The current U.S. State Department bilateral

⁹ Exhibit B at 1.

¹⁰ Exhibit B at 10.

¹¹ Exhibit 1; Exhibit D; Exhibit E.

¹² Tr. 19-33; Exhibit 4; Exhibit 5; Exhibit G. Applicant’s relationship to her siblings in Iraq was cited as a security concern in an April 2015 SOR, which was withdrawn by Department Counsel in July 2016. The only new disqualifying matter listed on the current SOR is Applicant’s past financial interest in the property in Iraq, which she has since relinquished. See Appellate Exhibit I.

¹³ Exhibit 6, as updated by current, publically-available information on the U.S. State Department website. See Appellate Exhibit VI. Neither party requested to reopen the record to provide matters for administrative notice following Iraq’s recent parliamentary elections.

fact sheet reflects that “Iraq is now a key partner for the U.S. in the region, as well as a voice of moderation and democracy in the Middle East.”¹⁴

The State Department, however, warns U.S. citizens not to travel to Iraq. The current State Department travel warning states:

U.S. citizens in Iraq are at high risk for violence and kidnapping. Numerous terrorist and insurgent groups are active in Iraq and regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and Western companies throughout Iraq. . . . The U.S. government’s ability to provide routine and emergency services to U.S. citizens in Iraq is extremely limited. . . . The U.S. government considers the potential threat to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines.¹⁵

The U.S. State Department reports the widespread commission of human rights abuses in Iraq. The State Department also reports that civilian authorities lack effective control over all security forces operating within Iraq, “particularly certain units of the Popular Mobilization Forces (PMF) that were aligned with Iran.”¹⁶

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 (Directive); and the National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

“[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

¹⁴ Department of State, Fact Sheet, *U.S.-Iraq Relations*, April 28, 2017. Appellate Exhibit VII.

¹⁵ Department of State, *Travel Warning*, dated January 10, 2018. Appellate Exhibit VII.

¹⁶ Department of State, *Iraq 2017 Human Rights Report*, Executive Summary. Appellate Exhibit VII.

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. See *also* ISCR Case No. 16-03712 at 3 (App. Bd. May 17, 2018).¹⁷

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* Security Executive Agent Directive 4 (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. Likewise, a concern arises if a person’s connections, contacts, or interests in a foreign country leave them vulnerable to pressure or coercion by any foreign interest. However, a person is not *per se* disqualified from holding a security clearance because they have familial, financial, or other ties to a foreign country. Instead, in

¹⁷ However, a judge’s mere disbelief of an applicant’s testimony or statements, 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 matters not alleged in an SOR. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice an issue raises a security concern, unalleged matters 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).

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.¹⁸

In assessing the security concerns at issue, I considered the 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 ¶ 7(f): substantial . . . property interests in a foreign country . . . that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

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;

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;

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

AG ¶ 8(f): the value or routine nature of the foreign . . . property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

¹⁸ 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).

An applicant with familial, personal, or financial ties to 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.” ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008). However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign ties is not easily identifiable or quantifiable. ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014). Moreover, when an applicant’s foreign ties are to a country where elements hostile to the United States and its interests operate, such an applicant faces a heavy burden in mitigating security concerns raised by such foreign ties.¹⁹

Here, Applicant’s connections to and contacts in Iraq are relatively weak when compared to the professional, financial, and personal bonds that she has to and in the United States. Of note, her only living child and grandchildren reside in the United States. Furthermore, Applicant has demonstrated, through her work in Iraq as a U.S. military linguist, that she can be trusted to properly handle and safeguard sensitive U.S. information.²⁰ Her relationship to her siblings in Iraq and the 1/20th interest she previously held in a piece of property in Iraq do not detract from this evidence. Additionally, Applicant’s candor in reporting her foreign connections and ties during the CI screening process and the strong character reference letters evidence her honesty, reliability, trustworthiness, and loyalty to the United States. In light of the record evidence, Applicant can be expected to resolve any potential conflict of interest in favor of U.S. national security interests.

Security clearance assessments about a person require a judge to closely examine the individual’s conduct and circumstances, both past and present. In a Guideline B case this assessment necessarily requires a judge to consider the relevant foreign country at issue. Furthermore, a past favorable clearance adjudication does not bar security officials from reassessing an applicant’s eligibility, especially when new matters arise.

After reviewing and weighing the evidence, both favorable and unfavorable, I find Applicant mitigated the security concerns raised by her foreign relatives and other ties to Iraq. All of the above listed mitigating conditions apply, in full or in part, and together with the favorable whole-person factors raised by the evidence,²¹ mitigate the foreign influence security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant’s eligibility for access to classified information.

¹⁹ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

²⁰ ISCR Case No. 12-08823 (App. Bd. May 6, 2016) (notwithstanding the presence of applicant’s mother and siblings in Iraq, Board affirmed judge’s favorable decision because, in part, applicant met his burden of proof in establishing AG ¶ 20(b) through his service as a U.S. military linguist). See *a/so* ISCR Case No. 17-00629 (App. Bd. May 24, 2018) (judge erred in not considering as a favorable mitigating factor applicant’s service as a U.S. military linguist and compliance with security procedures and regulations in dangerous, high-risk circumstances); ISCR Case No. 06-25928 (App. Bd. Apr. 9, 2008) (same); ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) (same).

²¹ See AG ¶ 2 (whole-person concept). See *a/so* 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).

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): FOR APPLICANT

Subparagraphs 1.a – 1.e: For Applicant

Conclusion

In light of the record evidence, it is clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge