



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



In the matter of: )  
)  
) ISCR Case No. 15-06745  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: Justin B. Kalemkiarian, Esq.

12/29/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence security concerns due to his connections to Iraq. Applicant has not contacted relatives in Iraq since 2013. He has served as a linguist in Iraq for about six years. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 27, 2015, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On April 5, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). Hearing Exhibit (HE) 2.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under the foreign influence guideline.

On June 6, 2016, Applicant responded to the SOR and requested a hearing. HE 3. On February 15, 2017, Department Counsel was ready to proceed. On June 22, 2017, the case was assigned to me. On September 21, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 25, 2017. HE 1. Applicant's hearing was held as scheduled using video teleconference. Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. Transcript (Tr.) 12-13.

During the hearing, Department Counsel offered three exhibits; Applicant offered five exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 18-23; GE 1-3; Applicant Exhibit (AE) A-E. On September 26, 2017, Applicant provided one exhibit, which was admitted without objection. AE F. On October 3, 2017, DOHA received the transcript of the hearing.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Procedural Ruling**

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Iraq with four attachments. Tr. 17-18; HE 4; I-IV. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to me taking administrative notice of the proffered documents. Department Counsel's request for administrative notice is granted. The "Iraq" section is quoted from Department Counsel's administrative notice request (bullet symbols and internal footnotes are omitted).

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

Department Counsel provided an article, by Christine Allison, "The Yazidis," *Oxford Research Encyclopedia of Religion* (Jan. 2017), which was admitted without objection. GE 4.

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

The SOR alleges the following relatives of Applicant are citizens and residents of Iraq: father (¶ 1.a); mother (¶ 1.b); and mother-in-law (¶ 1.c). Applicant did not admit or deny the allegations in SOR ¶¶ 1.a, 1.b, and 1.c because he has not communicated with his parents since 2013, and he had not communicated with his mother-in-law since 2003. HE 3. He did not know whether the three relatives are alive. He also provided some mitigating information. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 35-year-old linguist and cultural advisor. Tr. 24. For the previous 31 months and currently, he has been serving with an elite U.S. Special Operations Force (SOF) unit in Iraq. Tr. 24. Applicant was born in Iraq. Tr. 25. Applicant and his family are Yazidis. Tr. 25. Some Iraqi Muslims view Yazidis as infidels. Tr. 25. Applicant and his brothers did not serve in the Iraqi Army. Tr. 54. Applicant's father served in the Iraqi Army. Tr. 55. Applicant's two children are ages 11 and 12. Tr. 61. His spouse and children were born in Iraq, and they intend to become U.S. citizens. Tr. 61. Applicant's net worth for property and investments in the United States is about \$155,000. Tr. 64. He does not have any property or investments in Iraq. Tr. 64.

From 2005 to 2009, Applicant worked for the U.S. Army in Iraq as a cultural advisor and linguist. Tr. 26. In 2009, he immigrated to the United States, and in 2014, he became a U.S. citizen. Tr. 27; GE 1. He returned to Iraq to work with U.S. forces from August 2015 to present. Tr. 33; SOR response.

Applicant's parents were farmers in a Yazidi community. Tr. 28. The last time Applicant saw his parents was in 2009, just before he left Iraq. Tr. 30. The last time he spoke with his parents was in 2013. Tr. 30. In 2013, he sent his mother \$5,000 so she could have back surgery. Tr. 30, 50, 54. The last time he saw or spoke with his spouse's parents was in 2003. Tr. 31, 52. In August 2014, ISIL attacked the area where his parents lived in Iraq. Tr. 47. His spouse has not spoken to her mother since August 2014. Applicant's father-in-law is deceased. GE 1. ISIL insisted that the Yazidi men convert to Islam, or they were killed. Tr. 48. ISIL took the Yazidis' property and enslaved the women and children. Tr. 48. Applicant believed that ISIL was aware Applicant and his brothers assisted the United States, and ISIL destroyed his parents' farm. Tr. 50. He does not know where his parents or in-laws are located. Tr. 31. He believes his relatives who were in Iraq are either refugees, kidnapped, or deceased. Tr. 34, 51. They could be refugees if they were able to go to Kurdistan or Europe. Tr. 51. Something on social media indicated they were refugees. Tr. 59. He does not believe his parents, if they are alive, will return to Iraq because ISIL probably destroyed their farm, and Iraq is not safe

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<sup>2</sup> The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

for them. Tr. 65. He was unsure about the status of the land his parents owned in Iraq. Tr. 68.

Applicant's two brothers worked for the United States in Iraq as linguists, and they immigrated to the United States in 2012. Tr. 29, 42, 44-45. Applicant and his brothers were approved to immigrate to the United States because of the danger for U.S.-employed linguists in Iraq. Tr. 27. Applicant's brothers are employed in the civilian community in the United States. Tr. 46. His two brothers are U.S. permanent residents, and they plan to apply for U.S. citizenship when they become eligible to do so. Tr. 46. Applicant's spouse and two children live in the United States. Tr. 29. Applicant is proud to be an American, and he loves the United States. Tr. 35. On February 23, 2015, Applicant wrote a statement renouncing his Iraqi citizenship, and he provided the statement to his employer. Tr. 37, 65-66. He does not believe the Iraqi Government has a mechanism for renunciation of citizenship. Tr. 66. He does not consider himself to be a citizen of Iraq. Tr. 69.

### **Character Evidence<sup>3</sup>**

In August 2017, SOF officers indicated Applicant had been working closely with SOF units for 31 months. AE A; AE B. Applicant performed "above and beyond" requirements. He is "an irreplaceable member" of the unit. He "operated in austere combat conditions with grave risk to his own life," and he "has absolutely saved countless American lives." He "willingly placed himself in dangerous situations to translate" for SOF teams. His energy, dedication, and professionalism has enhanced mission success.

In 2016, an SOF officer who served closely with Applicant described him as a "reliable, hardworking, and honest linguist." He is "an immensely valuable asset" and his work ethic is "unparalleled among his peers." He recommended Applicant for a top secret clearance. In 2016, another lieutenant wrote Applicant "demonstrated professional acumen of the highest caliber." His cultural advice was "truly invaluable." Applicant has his "strongest recommendation of character, professionalism, and integrity."

In 2009, an Army officer who served with Applicant lauded his "irreplaceable work ethic and commitment to teamwork." In 2008, an Army lieutenant colonel gave his "strongest and unqualified recommendation" to Applicant because of his selfless and tireless support to the United States. He lauded Applicant for his reliability, trustworthiness, and intelligence. In 2007, an Army brigadier general wrote that Applicant, "continues to courageously serve U.S. forces in Iraq in a role identified by the President of the United States as his top priority in Iraq right now that being the development of Iraqi Security Forces." Applicant's work has been outstanding. "The work [Applicant] performs is arguably the most dangerous role possible for a local national interpreter. . . ." He noted Applicant had "risked everything to serve the United States Armed Forces during this conflict." In 2007, an Army major praised Applicant for

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<sup>3</sup> Unless stated otherwise, all of the information in this section is from attachments to his SOR response.

his outstanding performance of duty, responsibility, loyalty, diligence, dedication, and exceptional contributions to mission accomplishment.

Applicant provided additional character evidence as follows: character letters from a linguist, one chief petty officer, one lieutenant, and three staff sergeants; two letters of appreciation certificates; four certificates of appreciation; and one certificate of achievement. SOR response; AE D-AE E.

## **The Yazidis**

An article, by Christine Allison, "The Yazidis," Oxford Research Encyclopedia of Religion (Jan. 2017) describes the plight of the Yazidis in Iraq as follows:

One of the world's most endangered religious minorities, the Yazidis are a predominantly Kurdish-speaking group numbering some 500,000 souls, who once inhabited a wide area stretching across eastern Turkey, northern Syria, northern Iraq, and western Iran. Of these territories, only the community in Iraq still numbers in the hundreds of thousands. Most come from two areas: Sheikhan, a collection of villages and towns to the northeast of Mosul, and Sinjar, a mountain to the northwest close to the border with Syria. Until recently these areas seemed stable; however, in August 2014, the so-called Islamic State (Da'esh) attacked the ancient community of Yazidis of Mount Sinjar, massacring hundreds of men, enslaving thousands of women and children, and driving the population of some 350,000 Yazidis into camps for internally displaced persons in the Kurdistan region. They are targeted because of their non-Abrahamic religion; for many years they have been erroneously known as "devil-worshippers." In fact, their belief system incorporates visible elements from the three "religions of the Book" (Judaism, Christianity, and Islam) and traces of lesser-known religions, upon a substratum that may derive from Iranian religions (Zoroastrianism or similar). It is not a proselytizing faith, and religious relationships within the community are determined by birth. Marrying out is traditionally forbidden.

## **Iraq**

The U.S. State Department warns that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence and to avoid all but essential travel to Iraq. 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.

The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is extremely limited given the security environment. The Islamic State of Iraq and the Levant (ISIL) controls a significant portion of Iraq's territory. Within areas under ISIL control, the Iraqi government has little or no ability to exercise control and ensure public safety.

Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by improvised explosive devices (IED) occur frequently in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators (EFPs), magnetic IEDs placed on vehicles, human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and shootings using various direct fire weapons. Such attacks often take place in public venues such as cafes and markets.

Iraq witnessed a continued surge of terrorist activity in 2015, primarily as a result of the actions of ISIL. In 2015, the ISIL remained the greatest terrorist threat globally, maintaining a formidable force in Iraq and Syria, including a large number of foreign terrorist fighters. ISIL's capacity and territorial control in Iraq reached a high point in spring 2015, but began to erode over the second half of 2015. Although the government of Iraq made significant progress in its campaign to retake occupied territory from ISIL, there remained a security vacuum in parts of Iraq.

In its annual human rights report, the U.S. Department of State reported that ISIL committed the overwhelming number of serious human rights abuses, including attacks against civilians, especially Shia but also Sunnis who opposed ISIL, members of other religious and ethnic minorities, women, and children. ISIL members committed acts of violence on a mass scale, including killing by suicide bombings, improvised explosive devices, execution-style shootings, public beheadings, and other forms of executions. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the Iraqi government's authority and worsened effective human rights protections.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 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. 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.

AG ¶ 7 has three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant does not have frequent contacts<sup>4</sup> with any citizens or residents of Iraq. He is unable to contact his relatives, and he and his spouse are unable to contact her mother because they are Yazidis, who were forced off their land by ISIL. They are refugees, kidnapped, or deceased. Applicant credibly described the plight of his parents and mother-in-law. AG ¶ 7(a) is not established because of the absence of contact between Applicant and his spouse and their relatives in Iraq.

There are widely documented safety issues for residents of Iraq because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the DOD for about six years, and he is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in Iraq. Thousands of the U.S. and coalition armed forces and civilian contractors serving in Iraq are targets of terrorists along with Iraqi civilians who support the Iraq Government and cooperate with coalition forces.

The mere possession of close family ties with one or more family members living in Iraq is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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<sup>4</sup> The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).



Applicant lives with and is close to his spouse. His spouse's mother is a Yazidi who lived in Iraq. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). “[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Indirect influence from a spouse’s relatives living in Iraq could result in a security concern. See ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding “presence in India of close family members, viewed in light of that country’s troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his spouse) having foreign family contacts, establish the ‘heightened risk’” in AG ¶¶ 7(b) and 7(e)).

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iraq with the United States, and the situation in Iraq places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Iraq do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Iraq.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iraq has an enormous problem with terrorism. Applicant’s relationships with relatives who may be living in Iraq create a potential conflict of interest because terrorists could place pressure on his family living

in Iraq in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s contacts with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(b) and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(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

(f) the value or routine nature of the foreign business, financial, or 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a), 8(b), and 8(c) apply. Applicant does not have frequent contact with his mother-in-law or parents. They are or were citizens of Iraq; however, they may be deceased or refugees outside of Iraq. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." In 2009, Applicant immigrated to the United States, and in 2014, he became a U.S. citizen. His spouse lives in the United States, and she is a permanent U.S. resident. His children are residents of the United States. All of his siblings live in the United States.

Applicant's years of support to the DOD in Iraq as a linguist and cultural advisor, including the dangers that service entailed, weigh heavily towards mitigating security concerns. Applicant is currently serving in Iraq providing critical assistance to U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States' goals in Iraq. He has shown his patriotism, loyalty, and fidelity to the United States during his approximately six years of service in Iraq.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are or were citizens of Iraq and could possibly be located in Iraq. Applicant's mother-in-law is or was a citizen of Iraq, and she may reside in Iraq. Like every other resident of Iraq, any of his relatives who may be living in Iraq are at risk from terrorists.

It is important to be mindful of the United States' huge investment of manpower and money in Iraq, and Applicant has supported U.S. goals and objectives in Iraq. Applicant and his relatives possibly living in Iraq are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk if his relatives are still living in Iraq from lawless elements in Iraq.

In sum, Applicant's possible future connections to his relatives living in Iraq are less significant than his connections to the United States. His employment in support of the U.S. Government, family living in the United States, performance of linguist duties in a combat zone, and U.S. citizenship are important factors weighing towards mitigation

of security concerns. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant and his spouse do not have frequent contact with any relatives who are citizens and residents of Iraq. Any relationships with citizens and residents of Iraq raise important foreign influence security concerns, and they must be balanced against his connections to the United States.

In 2009, Applicant immigrated to the United States, and in 2014, he became a U.S. citizen. His spouse lives in the United States, and she is a permanent U.S. resident. His children are residents of the United States. All of his siblings live in the United States. When he became a U.S. citizen, he took an oath of allegiance to the United States. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or violated any of his employer's rules.

Applicant served as a linguist, translator, or cultural advisor for about six years in Iraq. He worked for U.S. government contractors. Applicant provided exceptional character references and certificates from SOF and Army personnel, who served with him in a U.S. designated combat zone. He made contributions to the U.S. military at personal risk. He is willing to continue to serve in Iraq in support of U.S. Armed Forces as a linguist, risking his life as part of his duties on behalf of the U.S. combat forces in Iraq. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His

past honorable service as a linguist weighs heavily towards approval of his security clearance. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”).

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there.<sup>5</sup> Iraq is a dangerous place because of violence from terrorists and insurgents. These entities continue to threaten the Iraq Government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Iraqi Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Iraqi Governments are allies in the war on terrorism.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated.

### **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: FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge

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<sup>5</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).