



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



In the matter of:)	
)	
)	ISCR Case No. 15-06814
)	
Applicant for Security Clearance)	

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: Ryan Mattson, Esq.

02/20/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated foreign influence and foreign preference security concerns raised by family members and property interests in Iraq, and his possession of an Iraqi passport. His past behavior demonstrates he can resolve any potential conflict of interest in favor of the United States. His undivided allegiance to the United States is corroborated by his dependability and performance while under threats and possible harm. Additionally, he has developed deep and long-lasting bonds in the United States. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 9, 2014. An investigator from the Office of Personnel Management (OPM) interviewed him on October 16, 2014. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) on April 27, 2016, issued him a Statement of Reasons (SOR) alleging security concerns under Guidelines B (foreign influence) and C (foreign preference). Applicant answered the SOR on May 23, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on February 14, 2017. The DOHA issued a notice of hearing on February 24, 2017, scheduling a hearing for March 7, 2017. At the hearing, the Government offered three exhibits (GE 1 through 3). GE 3 (administrative notice request) was marked and made part of the record, but it is not evidence. Applicant testified and submitted exhibits (AE) A and B. AE A is comprised of Tabs 1 through 14. I received AE B post-hearing. It is a request for me to take administrative notice of certain facts concerning Iraq. I marked and made it part of the record, but it is not evidence. GE 1 and 2 and AE A were admitted as evidence without objection. DOHA received the hearing transcript (Tr.) on March 20, 2017.

Procedural Issue

Applicant requested an expedited hearing. At hearing, Applicant stated he had sufficient time to prepare, was ready to proceed, and affirmatively waived his right to 15-days of notice of his hearing. (Tr. 7-8)

Department Counsel (GE 3) and Applicant (AE B) requested I take administrative notice of facts concerning Iraq. There were no objections, and I took administrative notice as requested. The noted facts are incorporated in my findings of fact.

Findings of Fact

Applicant failed to admit or deny any of the SOR allegations. He answered the SOR by providing comments and explanations. To the extent that his comments admit and are consistent with the SOR factual allegations, his comments and explanations to the SOR, and his hearing admissions, are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 58-year-old linguist, translator, and cultural consultant. He has worked for U.S. forces and federal contractors on and off since 2004. His current employer hired Applicant to work on intermittent contracts (as needed) in June 2014. He has been offered a full-time position contingent on his eligibility for a clearance.

Applicant was born, raised, and attended high school in Iraq. Between 1977 and 1980, he attended "Soviet Block" country universities. His father sent him there because it was less expensive. He transferred to an European university in a country with Western values where he studied between 1981 and 1988, and earned his bachelor's degree. He testified he did not serve in the Iraqi army. He was overseas attending college and avoided military service by paying a fee to the Iraqi government.

Applicant's father is 81 years old, and his mother is 78 years old. Both are citizens and residents of Iraq. She has been a homemaker all her life. His father served in the Iraqi army as an infantry officer, retired as a general officer in 1987, and receives a pension from the Iraqi government. He owns three properties in Iraq, his home and two rental properties. Applicant estimated the value of his father's home at about

\$300,000 - \$400,000, and the other two properties at about \$200,000 each. He clarified that the value of the properties fluctuate based on the country's political situation. Applicant testified he told his father he is not interested in any share or inheritance from his father's estate. Applicant denied owning any property or financial interests in Iraq.

Between 2004 and 2006, Applicant worked for federal contractors as an independent contractor in Iraq where he supplied U.S. personnel with construction equipment, materials, and supplies. Applicant is considered to have served U.S. personnel courageously, often times placing himself in danger in order to accomplish his mission and to help U.S. interests. He was a well-known supplier who worked closely with U.S. forces and drove around the area of operations in purchasing expeditions where he placed himself at risk. Applicant demonstrated exceptional skills and ability as an interpreter. He proved to be extremely valuable to the U.S. forces and gained the trust and confidence of his references. (AE A, Tabs 7, 8)

Applicant married his wife in 1993 in Iraq. They have three children. In 2008, Applicant immigrated to the United States with his wife and children. During the first year, he was unemployed and supported his family with his savings and his wife's assets. Applicant and his wife became naturalized U.S. citizens in September 2013. Their children are also naturalized U.S. citizens residing in the United States. Applicant's wife purchased a house in the United States (outright for about \$400,000), where Applicant and his family live. She obtained the funds by selling to her brother part of her interest in inherited properties that she and her family own in Iraq. Applicant testified that she is in negotiations with her brother to sell him more of her interest in the properties.

Applicant was issued an Iraqi passport in November 2007 that expired in 2015. He used his Iraqi passport frequently until he was issued his U.S. passport in September 2013. He claimed he did not use his Iraqi passport after he received his U.S. passport. He surrendered his Iraqi passport to his federal employer for safekeeping and to avoid any security clearance concerns in 2016. (AE A, Tab 11)

Applicant has worked for federal contractors as a linguist, translator, and cultural advisor since 2009. Because of Applicant's experience, professionalism, and high standard of performance, he is considered to be the preferred employee for high-level training missions. (AE A, Tabs 5, 6)

Applicant's mother-in-law is a citizen and resident of Iraq, although she also resides in Jordan part of the year. She previously worked for an Iraqi government agency. Applicant's brother and sister-in-law are citizens and residents of England. Applicant's wife and in-laws own significant property interests in Iraq. When his father-in-law died, his wife and in-laws inherited a commercial building with an estimated value of \$1 million, a home with an estimated value of \$800,000, and a third building with an estimated value of \$400,000. (Tr. 80-84) Applicant believes his wife inherited a one-third share of the properties.

Applicant has three brothers and six sisters who were born, raised, and educated in Iraq. One of his brothers is a resident and citizen of Italy. He has lived in Italy since 1981, and has a family there. A second brother is a citizen of Iraq, but lives in Jordan. His third brother is a citizen and resident of Iraq. He lives with and cares for his parents.

Applicant has three sisters who are citizen and residents of Iraq. Two of them are not married and work for two different Iraqi government agencies interacting with U.S. personnel in Iraq. U.S. personnel have favorably recognized and endorsed the two sisters U.S. visa applications because of their services and assistance. According to their references, the two sisters likely have placed themselves in danger because of their interaction with U.S. forces. (AE A, Tabs 13, 14) Applicant's third sister lives in the Iraqi countryside with her husband and children.

Applicant's fourth sister is an Iraqi citizen residing in Jordan with her husband and two children. She used to work for an Iraqi government agency. His fifth sister immigrated to the United States as a refugee in 2014. She is married to an Iraqi citizen residing in Iraq. His sixth sister is married to a retired U.S. Army officer; she is a naturalized U.S. citizen, and lives in the United States with her husband and children.

Applicant testified he immigrated to the United States because he was concerned about the threats to him and his family resulting from his work for U.S. personnel in Iraq. Applicant's references' corroborate the threats and that he took risks to help U.S. personnel. (Tr. 7 and 8) He has not travelled to Iraq after 2008. He contacts his family frequently over the telephone and through the internet. He has personal contact with his family by travelling to Jordan on almost a yearly basis for family reunions. He claimed he no longer has contact with any of his Iraqi friends. Applicant testified that he would resolve any possible conflict of interest in favor of the United States.

Applicant credibly testified that neither he, nor his wife or children, intend to return to live in Iraq. He and his family are very happy to be living in the United States and they enjoy the peace and quality of life they have in the United States. He credibly expressed gratitude for his children being safe in the United States, attending schools, and with having the opportunity for great futures. Two of his children, ages 22 and 20, attend college. The third child is in high school.

I take administrative notice of the following facts concerning the Iraqi government: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups and elements hostile to the United States remain active in Iraq. Iraqi forces, with the assistance of the United States, have seen successes recently and most of the territory previously held by ISIL has been retaken. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all but essential travel to Iraq should be avoided. Although the government of Iraq have made significant progress in its campaign to retake occupied territory from ISIL, there remains a security vacuum in parts of Iraq.

The State Department warns that anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by means of improvised explosive devices (IED) occur frequently in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators, 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.

The U.S. government considers the potential personal security threats to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. All U.S. Government employees under the authority of the U.S. Chief of Mission must follow strict safety and security procedures when traveling outside the Embassy and Consulates.

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 SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Director of National Intelligence implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG. I decided this case under the current AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is explained at 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 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.¹

An individual is not automatically disqualified from holding a security clearance because they have connections and contacts in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence-gathering history of that government; the country's human rights record; and other pertinent factors.²

The United States and Iraq are allies in the war against ISIL and other terrorists and insurgents. However, the serious security threat posed by these terrorists and other elements hostile to the United States must be taken into account in assessing the security concerns raised by Applicant's familial connections and other interests in Iraq. Applicant's relationship to these foreign relatives, coupled with the facts administratively noticed, raise a heightened security concern.

In assessing the security concern raised by Applicant's foreign contacts and interests, I have considered the following disqualifying conditions under AG ¶ 7, and mitigating conditions under AG ¶ 8:

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;

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 business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business 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

¹ ISCR Case No. 09-07565 at 3 (App. Bd. Jul. 12, 2012) ("As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, such as the foreign residence of an applicant's close relatives.") (internal citation omitted).

² ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

individual, group, organization, or government and the interests of the U.S.;

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

AG ¶ 8(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.

An individual with family members and other connections in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted access to classified information."³ However, what factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.⁴

In the present case, Applicant has his parents, four siblings, and his mother-in-law, who are citizens and residents in Iraq. His parents, mother-in-law, and wife have financial and property interests in Iraq. (His remaining close family members live in the United States or in countries where they are less likely to be subject to possible coercion or harm.) Notwithstanding, Applicant has a track record of resolving potential conflicts of interest raised by his relatives in Iraq and his fiduciary responsibilities to the United States in favor of U.S. interests. Since 2004, in the face of threats and harm to him and his family, Applicant maintained his loyalty and fiduciary obligations to the United States.

Applicant and his family immigrated to the United States because of the threats to him and his family in 2008. Notwithstanding, he has continued to serve the U.S. forces on other missions and would like to continue working for U.S. forces in the future.

Applicant's testimony that he would report any attempted coercion or threats, and that he would resolve any potential conflict in favor of the United States, is supported by his track record of doing so. His undivided allegiance to the United States is corroborated by his dependability and performance while under threat of harm for working with U.S. personnel. U.S. personnel who served with him in Iraq endorse his

³ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

⁴ ISCR Case No. 11-12202 at 5 (App. Bd. Jun. 23, 2014).

eligibility for a U.S. visa.⁵ Additionally, Applicant has developed deep and long-lasting bonds in the United States, as evidenced by his references, owning a home in the United States, his children attending American colleges, and Applicant's desire to continue working for U.S. personnel in Iraq.

I considered that the value of Applicant's parents', his wife's, and his mother-in-law's financial and property interests in Iraq are higher than his financial and property interests in the United States. However, the potential for Applicant to inherit his parents' property or financial interests in Iraq does not necessarily establish that he has a financial stake in Iraq cognizable under the foreign influence guideline. One or more of his siblings may inherit the property, or he may not be in a position to do so when the transfer occurs.

Applicant's wife inherited property and financial interests in Iraq when her father died, and there is the potential for her to share in a substantial inheritance when her mother dies. As stated above, the potential for his wife to inherit his mother's property or financial interests in Iraq does not necessarily establish that she has a financial stake in Iraq. However, his wife's property and financial interest in Iraq do raise a concern for Applicant cognizable under the foreign influence guideline.

Because of the security clearance process, Applicant now understands the importance of the security concerns raised by his and his wife's financial and property interests in Iraq. She already sold part of her property interest to her brother to purchase her home in the United States. Applicant indicated she was in negotiations with her brother to sell him additional interest in her property. It appears that they will work to divest themselves from those property interests in Iraq.

Regardless, Applicant's past behavior demonstrates his ability to resolve any potential conflict of interest in favor of the United States even under threats and facing possible harm. Accordingly, after a complete and thorough review of the record evidence, and while remaining mindful of my duty to resolve any unmitigated doubt in favor of protecting national security, I find that Applicant mitigated the security concerns

⁵ ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008) ("Generally, an Applicant's statements, by themselves, as to what he would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case. In this case, Applicant has served the U.S. military as a translator in dangerous circumstances in Afghanistan and has risked his life to protect American personnel there.) See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) ("As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.") (internal citations omitted).

raised by his connections to and contact with his family in Iraq and his financial and property interests in Iraq.

Guideline C, Foreign Preference

The foreign preference security concern is explained at AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The SOR alleged under Guideline C that Applicant possessed an Iraqi passport that expired in November 2015. The record evidence shows that Applicant disclosed his possession of the passport, and later he surrendered it to his employer for storage and to forestall any possible security concerns. (AE A, Tab 11)

Considering the evidence as a whole, I find that there is no foreign preference security concerns raised by the record evidence. After becoming aware of the security concerns raised by the passport, Applicant surrendered it to his employer and he did not renew the passport.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (SEAD 4, App. A, ¶¶ 2(a)) I also considered the nine adjudicative process factors listed at SEAD 4, App. A, AG ¶ 2(d). I have incorporated my comments under Guideline B in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 58-year-old employee of a federal contractor. He worked for U.S. personnel in Iraq between 2004 and 2008. He has worked for federal contractors since 2008, and established an excellent reputation for his knowledge, cultural expertise, and linguistic abilities. He is considered to have exceptional skills and abilities as an interpreter and trainer. Moreover, Applicant is considered to be a trusted employee, who is reliable, dependable, and a loyal American. Most importantly, he assisted U.S. forces on numerous occasions where he risked his life to acquire supplies for U.S. personnel. (See footnote 5, *supra*.)

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.g:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge