



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07230

Appearances

For Government:
Adrienne Driskill, Esq., Department Counsel

For Applicant:
Cathryn E. Young, Esq.
Griffith, Young & Lass

February 7, 2018

Decision

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by the presence of his family members, and potential financial interests, in Iraq. Applicant did not falsify a Government questionnaire as alleged. His request for national security eligibility and a security clearance is granted.

Statement of the Case

On May 27, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR)

alleging facts that raise security concerns under Guidelines B and E.¹ The SOR further informed Applicant that based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance.

Applicant answered the SOR, with attachments, on June 12, 2016, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on December 8, 2016. The case was assigned to another administrative judge on January 17, 2017. The case was reassigned to me on January 27, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 23, 2017, scheduling the hearing for April 10, 2017. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 8, which were admitted without objection, and Hearing Exhibit I for Administrative Notice. Applicant testified on his own behalf and submitted Applicant Exhibits A through G, which were also admitted without objection. The record was left open for receipt of additional documentation. Applicant presented two documents, which I marked Applicant's Exhibits H and I, and were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 18, 2017.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Republic of Iraq (Iraq). Department Counsel provided a five page summary of the facts, supported by four Government documents pertaining to Iraq, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. 15-16.)

The Government also moved to amend allegation 2.a in the SOR by correcting the date. There was no objection by Applicant. The amendment was granted. (Tr. 6.) The allegation was amended to read as follows:

You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), Standard Form 86, certified by you on December 31, 2014, in response to Section 20A, Foreign Financial Interest Real Estate: "Have you . . . ever owned, or do you anticipate owning . . . real estate in a foreign country?" You answered "No" and deliberately failed to disclose 1.b, above.

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

Findings of Fact

Applicant admitted to SOR allegations ¶¶ 1.a, and 1.b. He denied SOR allegation ¶ 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 45 years old and married. He is applying for a security clearance in connection with a prospective offer of employment from a Defense contractor. (Tr. 35.)

Paragraph 1 – Guideline B (Foreign Influence)

Applicant was born in Iraq in 1972. He received a college degree in Iraq in 1996. Beginning in 2003, after the invasion of Iraq, Applicant worked with the Coalition Provisional Authority in Iraq as a linguist/translator/interpreter/copywriter. He worked with various allied entities in Iraq until 2007. (Tr. 25, 27-30.)

Applicant immigrated to the United States under a Special Immigrant Visa in 2007. He was granted this status as a person who had assisted coalition forces in Iraq. He was recommended for this visa by a U.S. Air Force brigadier general who had worked with Applicant in Iraq. That officer's letter of recommendation is found on page 3 of Applicant Exhibit D. (Tr. 25, 30.)

Applicant began working for a Defense contractor in 2007 and returned to Iraq for three years. (Tr. 32-33.)

Applicant became a naturalized American citizen on July 12, 2013. Applicant's wife, who was born in Iraq but is of Lebanese ancestry and of Christian faith, is also a naturalized American citizen. (Applicant Exhibit A; Government Exhibit 1 at Sections 8 and 17; Tr. 67-70.)

Applicant's father is deceased. His mother is 77 and in poor health. She lives in Baghdad, Iraq, with Applicant's only sibling, a brother. Applicant's mother has severe memory issues. His brother works for a hotel. Neither Applicant's mother nor his brother are involved in the Iraqi government or military. Applicant has not seen his mother or brother since he first left Iraq in 2007. Applicant speaks with his brother and mother about once or twice a month. They do not know what Applicant does for a living. (Tr. 45-49, 54-56, 70-78, 80.)

Applicant helped prepare a "Counterintelligence-focused Security Screening Questionnaire" dated January 29, 2015. Question 37 on the questionnaire states, "Do you or any member of your immediate family own property in a country other than the United States?" Applicant answered affirmatively and stated that his mother owns real property and an antique store in Baghdad, Iraq. Applicant stated at the hearing that he is unsure of the value of the property because of the volatility of the situation in Iraq. The value of \$2.5 million in the questionnaire was based on information obtained from Applicant's brother. Applicant had no way of knowing whether this was an accurate estimate. Applicant does not want anything to do with any of the properties and does

not believe he is going to inherit them from his mother. Applicant renounced his Iraqi citizenship when he became an American citizen and has no Iraqi identification of any type. (Answer; Government Exhibit 3 at question 37; Tr. 49-54, 58-59, 78-79.)

Paragraph 2 – Guideline E (Personal Conduct)

The Government alleges in this paragraph that Appellant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability.

Appellant filled out an e-QIP on December 31, 2014. Section 20A of that questionnaire concerns Applicant's Foreign Activities. A subsection asks whether Applicant had ever owned, or did he anticipate owning, real estate in a foreign country. Applicant answered this question, "No." As stated, Applicant's mother owns real property in Iraq. Applicant does not believe he is going to inherit this property. As stated, he fully described this property during a "Counterintelligence-focused Security Screening Questionnaire" prepared on January 29, 2015. This was less than a month after he filled out the e-QIP. (Tr. 58-59, 81-84.)

Mitigation

Applicant came to the United State with very little, and is proud to be a "self-established" person. He saved the money he made working and was able to invest in real estate. (Applicant Exhibit C; Tr. 34, 36-39, 70-71.)

Regarding being an American citizen Applicant stated, "I like actually the principles and the values of this country because the first thing, the law. No one is above the law. This is the good thing actually in this country. The second thing, democracy. I mean everyone, if he's born here actually if he's native American, he can actually run for the presidency." (Tr. 41.)

Applicant is a highly respected and successful linguist. This is shown by letters of appreciation and certificates of achievement presented to him with regard to his work in Iraq in the period from 2003 through 2007. (Applicant Exhibit D.)

Two military officers who worked with Applicant in Iraq wrote letters of recommendation in April 2017. A US Army colonel stated, "[Applicant] is very trustworthy and responsible. I have full confidence in his loyalty to the United States. His character is beyond reproach. . . . I would trust him with sensitive information and am honored to give him a strong reference." (Applicant Exhibit H.)

A retired major in the US Army Reserve stated that Applicant is "a professional of great moral character, integrity and an outstanding work ethic." (Applicant Exhibit I.) (See Tr. 31-32.)

Iraq

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (HE I: Attachments.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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 and endures throughout off-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 the applicant may deliberately or inadvertently fail to protect or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline for Foreign Influence 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable 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

(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.

Applicant has a mother and a brother who live in Baghdad, Iraq. His mother owns real property and an antique store in Baghdad. Applicant's brother estimates that the real property and the stores contents are worth about \$2.5 million. The evidence is sufficient to raise these disqualifying conditions.

Iraq has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's substantial and close family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).²

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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.

² The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has minimal contact with his mother and brother who live in Iraq. He has not seen them in ten years and has no desire to see them in the future. His contact with them is on a monthly basis. He is a proud American citizen, and he feels he has succeeded in this country on his own, without help from anyone. AG ¶¶ 8(a), (b), and (c) apply.

AG ¶ 8(f) also applies. Applicant has no desire to inherit any property in Iraq. He was extremely uncertain about his ability to have a legal right to it, since he has no Iraqi identity papers, and is no longer an Iraqi citizen. The value of \$2.5 million put on the property by Applicant's brother is extremely speculative, and is given little weight.

Applicant is knowledgeable about his security responsibilities, and evinced a credible intent to follow appropriate rules in reporting any attempts by foreign actors to influence him. (Tr. 89-90.)

Applicant has completely mitigated the security significance of the presence of his relations in Iraq, as well as the concerns over his family's property there. Paragraph 1 is found for Applicant.

Paragraph 2 - Guideline E (Personal Conduct)

The security concerns pertaining to the personal conduct guideline are 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleged in SOR ¶ 2.a that Applicant falsified a Government questionnaire filled out by him on December 31, 2014, by not admitting that he anticipated owning foreign property.

I find that Applicant did not intend to falsify this questionnaire. I make this finding based on three factors. First, according to his testimony and other statements, Applicant does not have an expectation of inheriting this property from his mother. In other words, he does not anticipate owning foreign property, which is the gravamen of the question. So answering, "No," was not a false answer.

Second, English is the second language for the Applicant. The concept found in the word "anticipate" was difficult for the Applicant to understand and took some explanation at the hearing. (Tr. 80-84.)

Third and finally, Applicant was subject to a counterintelligence-focused security screening on January 29, 2015. This was less than a month after the e-QIP was prepared. The questionnaire prepared by the screener shows that Applicant fully disclosed the property his mother owned in Iraq, and gave a value. It is noted that the question is phrased differently, and concentrates on current ownership of property, not an anticipation of ownership. It was, therefore, easier for a person not fluent in the English language to understand.

Based on my finding that Applicant did not falsify his questionnaire, none of the disqualifying or mitigating conditions apply to Applicant's conduct. Paragraph 2 is found for Applicant.

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 relevant 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(b), 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but warrant additional comment.

Applicant was born in Iraq, but from 2003 through 2010 he worked successfully for coalition forces in Iraq. Based on his work, and with the recommendation of an American general officer, Applicant received a Special Immigrant Visa. Applicant has shown himself to be a talented and patriotic American citizen and member of the Defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant mitigated the Foreign Influence and Personal Conduct security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

Wilford H. Ross
Administrative Judge