



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-07130
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

03/23/2018

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**Decision**

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HESS, Stephanie C., Administrative Judge:

This case arises under Guidelines B (Foreign Influence) and C (Foreign Preference). Applicant mitigated the potential security concerns raised by his ties to family members in Iraq. Clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on January 2, 2015. On April 14, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines B and C. The DOD acted under Executive Order (Ex. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant submitted his Answer to the SOR on June 2, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 15, 2016, and the case was assigned to me on October 26, 2016. On January 23, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the

hearing was scheduled for July 25, 2017. I convened the hearing as scheduled. Government Exhibit (GX) 1 was admitted into evidence without objection. Applicant was concerned about some of the information contained in GX 2, a counterintelligence screening questionnaire and interview summary and specifically disagreed with some of the information that it contained. However the specific information was not relevant to the concerns raised in the SOR. I admitted GX 2. Applicant testified and Applicant's Exhibits (AX) A through E were admitted without objection. DOHA received the transcript (Tr.) on August 1, 2017.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017. The outcome of this case would have been the same if decided based on the former AG.

### **Procedural Issues**

At the hearing, Department Counsel moved to withdraw SOR ¶ 2.a, and I granted his motion. Since the SOR was issued in August 2016, Applicant's father passed away. On my own motion, I have withdrawn SOR ¶ 1.a.

Department Counsel requested that I take administrative notice of facts concerning Iraq. The relevant facts are discussed below.

### **Findings of Fact**

The SOR alleges under Guideline B that Applicant's, four brothers, four sisters and four brothers-in-law are citizens and residents of Iraq. It further alleges that each of Applicant's brothers and one brother-in-law served or is serving in the Iraqi Army, and that two of Applicant's brothers-in-law are employed by the Iraqi government. Applicant admits these allegations. Applicant also admits that he sent his family members between \$40,000 and \$50,000 since 2009, and that he will inherit a share of his father's property upon his death. The SOR also alleges that one of Applicant's brothers works in a government-run factory, and that another of his brothers is retired from work in a government-run factory. Applicant denies these allegations. Under Guideline C, the SOR alleges that Applicant possesses a current Iraqi National ID card. Applicant admits this allegation.

Applicant, 40, was born in Iraq, and attended high school and college in Iraq, graduating from college with a teaching degree in English. From December 2004 until approximately February 2008, Applicant worked with U.S. Forces in Iraq as a local linguist. As a result of this work, Applicant was approved for a special immigrant visa to immigrate to the United States. He immigrated in March 2008, and in March 2013 became a naturalized U.S. citizen. He has been working as a linguist in Iraq for his current employer since 2008. He was granted a position of trust in 2008. (GX 1.)

Applicant testified that none of his brothers worked for a government-run factory, and confirmed that his brothers served in the Iraqi army. (Tr. 24-25.) His brothers each work in private enterprises. The brothers reside together in the house they inherited from their father, valued at between \$120,000 and \$140,000. (Tr. 55.) Technically, Applicant is also part owner of the house will. However, he will not inherit any money, unless his brothers sell the house. (Tr. 28-29.)

The \$40,000 to \$50,000 that Applicant sent his family was for medical expenses for both of his parents. In late 2015 or early 2016, Applicant sent an additional \$10,000 or \$11,000 in installment payments to help one of his brothers cover the additional medical and funeral costs for their father. (Tr. 28; Tr. 54.) Applicant talks with his youngest brother every one to two weeks and his other brothers every few weeks. Applicant talks to his sisters two to four times a year, if they are at his brothers' house when he calls. Applicant has not in will not disclose to his family members the nature or location of his work. (Tr. 45-49.)

Applicant last saw his family members in 2014, prior to working in his current position. Although he works in Iraq, he is not in the same city as his family, and it is too dangerous and the mission is too secret for his family to come to the city where he works. He did not attend his father's funeral in 2015. (Tr. 48-49.)

Two of Applicant's brothers-in-law are working at government-run factories, one of whom previously served in the Iraqi army. Applicant does not have any significant contact with his brothers-in-law. (GX 2.)

Applicant possesses a duplicate copy of a government-issued document that is proof of his birth as an Iraqi citizen. The original was filed in Baghdad when Applicant was born. This is the document that was referred to as an Iraqi ID card in the SOR. Applicant did not exercise his rights or privileges as an Iraqi citizen to receive this document. He does not possess a current Iraqi passport and he declared his willingness to renounce his Iraqi citizenship in writing in January 2017. (Tr. 39-41; AX A.) SOR ¶ 2.b is resolved.

Applicant purchased a house in the United States in 2016. He owns his vehicle outright, which he purchased used. He has two checking accounts, a savings account, and a 401(k). He is registered to vote in the United States. (Tr. 58-62.) Applicant's allegiance is to the United States. He views Iraq as the country of his birth, but the United States as his home. (GX 2.)

Iraq is a constitutional parliamentary republic. The outcome of the 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power. However, severe human rights problems were widespread. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections.

Iraq witnessed increased terrorist activity in 2015, primarily due to the actions of the Islamic State of Iraq and the Levant (ISIL). Although the government of Iraq made significant progress in its efforts to retake occupied territory from ISIL, there remains a security vacuum in parts of Iraq. The U.S. State Department warns that U.S. citizens in Iraq remaining at high risk for kidnapping and terrorist violence and to avoid all travel to Iraq. 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 U.S. State Department also warns the anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq.

The U.S. Government requires its personnel in Iraq to live and work under strict security guidelines. Kidnappings and attacks by means of improvised explosive devices (IED) occur frequently in many areas. IED attacks often take place in public venues.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

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

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

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

The concern is set forth 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 following disqualifying conditions are potentially applicable: AG ¶ 7

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

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The mere possession of ties with family in Iraq is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has such a relationship, 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). The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, (App. Bd. Mar. 29, 2002).

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, a family member is associated with or dependent upon the government, or there is a known threat of terrorism within the country. The relationship of Iraq with the United States places a high burden of persuasion on Applicant to demonstrate that his relationships with his family in Iraq do not pose a security risk.

The following mitigating conditions are potentially applicable:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and

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.

Applicant's contacts with his family members in Iraq are frequent and are not casual. However, Applicant has taken steps to protect himself and his family members from any potential conflict of interest by strictly following U.S. government security guidelines, and has not seen his family members since 2014. Further, Applicant has not and will not disclose to his family members the nature or location of his work. Applicant provided financial assistance to his family members solely for the extraordinary costs of medical care and funeral expenses for his parents, and he does not provide routine support for his family members. Upon his father's death, Applicant became part owner of the house where his brothers reside, however, this property interest does not warrant security concerns. AG ¶ 8(a) it is partially applicable.

Applicant's work as a translator with U.S. Forces earned him a special immigrant visa, and Applicant became a naturalized U.S. citizen in 2013. Applicant has established substantial ties with the United States, including purchasing a house and a car, and registering to vote, and has declared his willingness to renounce his Iraqi citizenship. Through his ongoing commitment to U.S. Forces and their missions in Iraq, Applicant has demonstrated that his loyalties lie with the United States. Accordingly, Applicant can be expected to resolve any potential conflict of interest in favor of the U.S. interest. AG 8(b) applies.

The SOR also alleged a concern under Guideline C. However, after fully reviewing that Guideline, I find that the record evidence does not support application of any of the disqualifying conditions. SOR ¶ 2.b is resolved in Applicant's favor.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant's ongoing efforts and dedication in support of the U.S. mission in Iraq are commendable. He is a U.S. citizen, a homeowner, and a registered voter. Applicant has expressed his willingness to renounce his Iraqi citizenship. These actions demonstrate his loyalty and ties to the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his contacts with his family in Iraq. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **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
Subparagraph 1.a through 1.g:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraph 2.b:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge