



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-07313
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/12/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a native of Iraq whose spouse, youngest daughter, and other family members are Iraqi resident citizens. He incurred some delinquent debts after he was granted a Chapter 7 bankruptcy discharge in January 2003. When he applied for security clearance eligibility, he was not fully candid about some foreign ties and contacts, including his spouse's employment with Iraq's government, or about his past-due debts. The foreign influence, financial considerations, and personal conduct security concerns are not mitigated. Clearance is denied.

Statement of the Case

On May 27, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (foreign influence), Guideline F (financial considerations), and Guideline E (personal conduct). The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On July 15, 2016, Applicant answered the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 6, 2016, the Government submitted a File of Relevant Material (FORM), consisting of ten exhibits (Items 1-10). DOHA forwarded a copy of the FORM to Applicant on October 7, 2016, and instructed him to respond within 30 days of receipt. Applicant received the FORM on October 24, 2016. No response to the FORM was received by the November 23, 2016 deadline. On August 9, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Evidentiary Ruling

Department Counsel submitted as Item 9 a summary of an enhanced subject interview of Applicant conducted under oath on February 2, 2015. This document was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summary did not bear the authentication required for admissibility under AG ¶ E3.1.20.

In ISCR Case No. 15-01807 decided on April 19, 2017, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview in the absence of any objection to it or any indication that it contained inaccurate information. The applicant in that case had objected on appeal to the accuracy of some of the information in a FORM, but had not objected to the interview summary or indicated that it was inaccurate in any aspects when she responded to the FORM.

Unlike the applicant in ISCR Case No. 15-01807, Applicant did not submit a response to the FORM submitted in his case. However, as in ISCR Case No. 15-01807, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

IMPORTANT NOTICE TO APPLICANT: The attached summary of your PSI (Government Exhibit #9) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the reports are unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to the FORM or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. He was advised that if he did not respond, the interview summary may be considered as evidence in his case. Applicant chose to rely solely on the record presented in the FORM, which included the information reflected in the interview summary, however disqualifying, mitigating, or exculpatory the information. I cannot presume without any evidence that Applicant failed to understand his due process rights or obligations under the Directive or that he did not want the summary of his interview considered in his case. Accordingly, I accepted Item 9 in the record, subject to issues of relevance and materiality in light of the entire record, including Applicant's admissions to the allegations.

Administrative Notice

Item 10 in the FORM consists of an Administrative Notice request regarding Iraq, dated October 6, 2016. The Government's request is based on four publications from the U.S. State Department and on a Congressional Research Service (CRS) report for Congress. I was provided extracts of the documents and given the URLs where I could obtain the full documents.²

² The Government's request for administrative notice was based on publications of the U.S. State Department: *Quick Facts: Iraq*, updated on January 28, 2016; *Iraq Travel Warning*, dated July 6, 2016; *Country Reports on Terrorism 2015*, dated June 2, 2016; and *Country Reports on Human Rights Practices for 2015: Iraq*, published on April 13, 2016. The CRS report is titled *Iraq: Politics and Governance*, dated March 9, 2016.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns, see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007), I have taken administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant had an opportunity to comment on the Administrative Notice request in the FORM. He filed no response and so is considered to have waived any objections.

Concerning the relevance of the information, some of the information relied on by the Government in its Administrative Notice request is no longer current. The State Department issued its *Country Reports on Human Rights Practices for 2016—Iraq*, which was updated on March 29, 2017. On June 14, 2017, the State Department issued an updated *Iraq Travel Warning*. In accord with Appeal Board precedent to consider the most current political conditions, I reviewed the full texts of the updated publications, which may be accessed from the State Department's website www.state.gov. With that caveat, the facts administratively noticed are set forth below.

Summary of SOR and Answer

The SOR alleges under Guideline B that Applicant's spouse is a resident citizen of Iraq employed by a ministry of the Iraq government (SOR ¶ 1.a); that his stepdaughter (SOR ¶ 1.b) and his sister (SOR ¶ 1.c) are resident citizens of Iraq; that his brothers-in-law are Iraqi resident citizens who work in ministries of the Iraq government (SOR ¶ 1.d); that his spouse owns property worth about \$180,000 in Iraq (SOR ¶ 1.e); that he receives financial support from his spouse in Iraq (SOR ¶ 1.f); and that he provided financial support for his spouse in approximately 2010 for her to build her home in Iraq (SOR ¶ 1.g). Under Guideline F, Applicant is alleged to owe \$10,409 in delinquent debt as of May 27, 2016 (SOR ¶¶ 2.a-2.f) after being granted a Chapter 7 bankruptcy discharge in January 2003 (SOR ¶ 2.g). Under Guideline E, Applicant allegedly falsified his December 31, 2014 Standard Form 86 by denying the following: that he, his spouse, or dependent children ever owned any real estate in a foreign country (SOR ¶ 3.a); that he ever provided financial support for a foreign national (SOR ¶ 3.b); that he or any member of his immediate family had any contact with a foreign government, its establishment, or its representatives in the last seven years (SOR ¶ 3.c); that he had traveled outside the United States in the last seven years (SOR ¶ 3.d); and that he had any record of delinquency involving routine accounts in the past seven years or was currently over 120 days delinquent on any debt (SOR ¶ 3.e).

When Applicant answered the SOR allegations, he was deployed to Iraq in support of Operation Inherent Resolve. Applicant admitted the Guideline B allegations. He admitted the bankruptcy discharge and the debts alleged in Guideline F, with the exception that the debt alleged in SOR ¶ 1.e was a duplicate of the debt alleged in SOR ¶ 1.a. He submitted a copy of a letter drafted to the collection entity identified in SOR ¶ 1.e disputing the debt. Concerning the alleged falsifications under Guideline E, Applicant admitted that he answered the SF 86 inquiries as alleged, but he asserts that he misunderstood the question and marked the wrong box in each instance. (Answer.)

Findings of Fact

Applicant's admissions to the foreign family and financial ties in SOR ¶¶ 1.a-1.g and to the bankruptcy discharge and financial delinquencies alleged in SOR ¶¶ 2.a-2.d and 2.f-2.g are incorporated as findings of fact. After considering the FORM, which includes Applicant's Answer to the SOR as Item 2, I make the additional findings of fact.

Foreign Influence

Applicant is a 59-year-old Kurdish native of Iraq who has been a dual citizen of Iraq and the United States since his U.S. naturalization in March 2007. He has taken no steps to relinquish his Iraqi citizenship, although he expressed a willingness to do so during a personal subject interview conducted under oath on February 2, 2015. He married his first spouse in Iraq in 1977, and they came to the United States in December 1996, seeking political asylum because of his prior work in Iraq on behalf of the United States. (Items 3-4.) He and his first wife had two daughters and a son born in Iraq in 1983, 1991, and 1985. They are now U.S. resident citizens. (Item 4.)

Applicant worked as a self-employed cab driver in the United States. In January 2006, Applicant and his first wife divorced. He went to Iraq as a defense-contractor employee to serve as a linguist for the U.S. military. While in Iraq, he married his current spouse, a resident citizen of Iraq. The file contains conflicting dates for his marriage, in January 2006 (Item 3) and in 2009 (Item 4). She had a daughter, who is now 13 years old. In January 2009, Applicant and his current spouse had a daughter in Iraq. Applicant's employment as a linguist in Iraq ended in July 2009, and he returned to the United States without his new wife, daughter, and stepdaughter. (Items 3, 4, 9.) According to Applicant, he netted approximately \$240,000 during his three years as a linguist in Iraq. (Item 9.)

Unemployed at the time, Applicant went to Iraq from July 2010 to June 2011 to see his spouse and daughter. He gave his spouse \$90,000 toward the construction of her home in Iraq. Applicant returned to Iraq and lived with his wife and daughter in his spouse's home from February 2012 to February 2014. (Items 4, 9.) After returning to the United States, Applicant worked as a self-employed cab driver. (Item 3.) In March 2014, she began providing him financial assistance to pay his bills and living expenses. As of February 2015, she had sent him a total of \$3,000. Applicant reported daily contact with his spouse, who was employed as an engineer with a ministry of the Iraq government. Her income from the Iraq government is sufficient to support herself and her daughters and also help Applicant. (Item 4.)

Applicant has a sister and two brothers-in-law, who are resident citizens of Iraq. His sister was not employed outside the home as of February 2015. One brother-in-law is employed as an engineer for a ministry of the Iraq government involved in economic matters. The other brother-in-law works as a technician for the Iraq government in the energy sector. As of February 2015, Applicant had annual contact with his sister and brothers-in-laws in Iraq. In contrast, Applicant reported that he had not had any contact

since 2006 with his sister who lives in the United States. He had weekly contact with his adult children from his first marriage, who live in the United States. (Item 4.)

On December 31, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for a security clearance to return to Iraq as a linguist. During his ensuing background investigation, Applicant was interviewed under oath on February 2, 2015, by an authorized investigator for the Office of Personnel Management (OPM). He advised that his loyalty and affinity are to the United States. He denied any intention to live in Iraq, which he described as a country in turmoil, and his desire to bring his spouse, their daughter, and his stepdaughter to the United States to live. He indicated that his daughter by his second wife has U.S. citizenship, so he will bring her to the United States to live. (Item 9.)

Financial

Applicant filed a Chapter 7 bankruptcy petition on September 26, 2002. (Items 5, 6.) Approximately \$107,000 in debt was discharged on January 7, 2003. (Items 4-6.) During an interview with a government investigator on February 25, 2015, Applicant explained that he had filed for the bankruptcy because he had been sued after he had been in an automobile accident and did not have insurance. (Item 4.)

Applicant defaulted on a car loan, resulting in the vehicle being voluntarily repossessed. As of February 2014, Applicant owed \$8,337 on the loan (SOR ¶ 2.d). (Items 8, 9.) In August 2011, a collection entity acquired a \$346 past-due cable services debt (SOR ¶ 2.b). (Items 7, 8.)

While Applicant was living in Iraq with his spouse from February 2012 to February 2014, a \$720 debt was referred for collection by a real estate investment company in April 2012 (SOR ¶¶ 1.d and 1.e, same debt). In July 2013, a utility company in his ex-wife's locale placed for collection a \$78 debt on an account in his name (SOR ¶ 2.c). In February 2014, a \$208 insurance debt was assigned for collection (SOR ¶ 1.f). In March 2014, Applicant opened a credit-card account. In June 2014, a \$138 balance was charged off for nonpayment (not alleged). (Item 8.)

When interviewed by the OPM investigator on February 2, 2015, Applicant did not dispute the debts on his credit record, although he did not recognize most of them. He indicated about the past-due car loan in SOR ¶ 1.d that his ex-wife had voluntarily surrendered a car when she could no longer afford the payments. He expressed an intention to pay his delinquent debts. (Item 9.) As of September 2015, Applicant's credit report showed only the two collection debts alleged in SOR ¶¶ 1.a (duplicated in SOR ¶ 1.e) and 1.b. (Item 7.) He provided no evidence of any payments on the debts alleged in the SOR.

As of his February 25, 2015 interview, Applicant indicated that he generates enough income to cover his monthly expenses and purchase basic necessities. However, he was

living in a hotel because he could not rent a residence due to his poor credit history. He relied in part on his spouse's financial support. (Item 4.)

Personal Conduct

On his December 31, 2014 SF 86, Applicant responded negatively to an inquiry into whether he had ever held dual citizenship. He indicated that his sister in Iraq was deceased. He responded negatively to the following inquiries, "Have you, your spouse, cohabitant, or dependent children **EVER** owned, or do you anticipate owning, or plan to purchase real estate in a foreign country?" and "Have you **EVER** provided financial support for any foreign national?" He answered "No" to an inquiry concerning whether he or any member of his immediate family had any contact with a foreign government in the last seven years. Applicant also responded negatively to whether he had traveled outside the United States in the last seven years. He listed no delinquency involving routine accounts and responded "No" to all the financial record inquiries, including those concerning any repossessions in the last seven years, any loan defaults in the last seven years, any debts turned over for collection in the last seven years, and any debts currently over 120 days delinquent. (Item 3.)

Applicant admitted to the OPM investigator on February 2, 2015, that he had not relinquished his Iraqi citizenship as he had no reason to do so. He acknowledged that his spouse owns her home in Iraq, which he estimated was worth about \$180,000, and that he had given his spouse \$90,000 for the home, \$20,000 to \$30,000 of which came from his income as a linguist in Iraq and \$60,000 from a home that he had sold in Iraq. Applicant was unable to provide accurate information, including for his sister in Iraq. He explained that he responded "no" to any foreign contacts because he did not think this meant family members. As for his foreign travel, Applicant admitted that he traveled to Iraq "from April 2012 to June 2014" but he had listed that he was in Iraq under the residence section and thought that would suffice. When asked about his finances, Applicant denied any past-due debts as his ex-wife was very organized and paid all bills in a timely manner. When confronted with the delinquencies on his credit record, Applicant did not dispute them, but he claimed he was unaware of them. He volunteered that his adult children know his account numbers and passcodes on his accounts and may have contributed to some of the debts. (Item 9.)

During his February 25, 2015 interview, Applicant completed forms detailing his foreign relatives' citizenship, addresses, and occupations and his foreign travel. He disclosed his financial contribution to his spouse's home construction in 2010 and her employment with the Iraq government, and her ongoing financial support of him since March 2014 to help him with his bills. (Item 4.)

Administrative Notice

In 2003, the United States led a coalition to remove Saddam Hussein from power in Iraq. Following the removal of Hussein's government from power, open elections were held in January 2005 to elect a national legislature. In October 2005, a new Iraqi constitution

was ratified and another round of elections took place in December 2005. Iraq's new government, a constitutional parliamentary republic, took office in March 2006. Iraq's 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from former prime minister Nuri al-Maliki to Prime Minister Haider al-Abadi. The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and its people, and the December 2011 withdrawal of U.S. troops from Iraq marked a milestone in the relationship between the two countries as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now considered a key partner for the United States in the region as well as a voice of moderation in the region.

However, Iraq's sectarian and ethnic divisions are a major challenge to Iraq's stability and to U.S. policy in Iraq and the broader Middle East region. Iraq's one-time Al Qaeda affiliate, which adopted the name Islamic State of Iraq and the Levant (ISIL) or, alternately, Islamic State of Iraq and Syria (ISIS) in 2013, constitute the most violent component of the Sunni rebellion to Shiite political domination.

Gains by ISIL (which now calls itself the Islamic State, aka Da'esh) in mid-2014 posed a significant threat to the territorial and political integrity of Iraq and led the Obama Administration to resume an active military role in Iraq. In 2015, ISIL maintained a formidable force in Iraq and Syria, although its capacity and territorial control began to erode during the second half of 2015. There remained a serious security vacuum in parts of Iraq, and egregious terrorist attacks were carried out throughout the year which killed more than 7,500 civilians and injured more than 13,800 in 2015. The Iraq government suffered losses across its national security apparatus, especially in the Iraqi Army and federal and local police. The Iraq government has taken a number of steps to disrupt ISIL's financial activity. However, violence occurred throughout 2016, largely fueled by ISIL's actions as government forces fought to liberate territory lost to ISIL, primarily in Arab Sunni and some other minority and mixed areas.

Severe human rights problems were widespread in Iraq in 2015 and 2016. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority. The Popular Mobilization Forces (PMP), a state-sponsored umbrella military organization, was reported to have killed, tortured, and kidnapped civilians, although the overwhelming majority of human rights abuses were committed by ISIL. ISIL members committed violence on a mass scale, including suicide bombings and use of improvised explosive devices, executions by shooting and public beheading, and use of chemical weapons. ISIL engaged in kidnapping, rape, enslavement, forced marriage, sexual violence against civilians from a wide variety of religious and ethnic backgrounds, recruitment of child soldiers, and trafficking in persons.

As of June 14, 2017, the U.S. State Department continues to warn U.S. citizens against all travel to Iraq because of the real dangers and the limited ability of the Embassy to assist U.S. citizens. U.S. citizens are at high risk for kidnapping and terrorist violence from numerous active terrorist and insurgent groups in Iraq, including ISIL. U.S. citizens in Iraq are urged to avoid protests and large gatherings. 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 guidelines.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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 national security eligibility will be resolved in favor of the 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 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. Section 7 of EO 10865 provides that 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

Guideline B: Foreign Influence

The security concern about foreign influence is articulated 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 that is 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.

Applicant's spouse, youngest daughter, stepdaughter, sister, and two brothers-in-law are resident citizens of Iraq, a country mired in ethnic conflict and rife with terrorist activity as it struggles to become a stable and self-reliant nation. Applicant's spouse and two of his brothers-in-law are employed by Iraq's government, albeit in civilian ministries unrelated to security.

Review of Applicant's contacts and connections to these foreign citizens is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or create a potential conflict of interest under AG ¶ 7(b). AG ¶¶ 7(a) and 7(b) provide:

- (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
- (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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

There are probably no closer personal bonds than that of husband and wife and parent and child. Applicant traveled to Iraq and resided with his spouse from July 2010 to June 2011 and again from February 2012 to February 2014. He gave his spouse \$90,000 in 2010 toward the construction of her home in Iraq. Since his return to the United States in 2014, he has had daily telephone contact with his spouse and daughter in Iraq, and his spouse has provided him some funds from her income as an engineer with the Iraq government. Applicant has indicated that he would like to sponsor his spouse and stepdaughter for U.S. immigration and that he will someday bring his youngest daughter to the United States to live. She apparently has derivative U.S. citizenship through him because he was a naturalized U.S. citizen when she was born. Applicant clearly has close ties of affection or obligation to his spouse, daughter, and stepdaughter who, as resident citizens of Iraq, are at significant risk of undue foreign influence or pressure. Terrorist groups, most notably ISIL, maintain a formidable force in Iraq and have been shown to have little regard for the human rights of Iraqi citizens.

Applicant did not detail the nature of his relationships with his sister or brothers-in-law in Iraq. His contact with them, which he described as annual, would suggest that he has casual relations with these family members. However, it is difficult to conclude that these foreign ties and contacts do not present a heightened risk, given the sibling bond and his brothers-in-laws' employments with the Iraq government. AGs ¶ 7(a) and 7(b) clearly apply in this case, although Applicant is seen as vulnerable primarily because of his spouse, daughter, and stepdaughter in Iraq.

Concerning AG ¶ 7(f), there is no evidence that Applicant has a present ownership interest in his spouse's home in Iraq, which he valued at \$180,000. Even so, it is an important asset for his spouse and daughter and as such, it could subject Applicant to a heightened risk of foreign influence or exploitation or personal conflict of interest under AG ¶ 7(f), which provides:

(f) substantial business, financial, or property interest 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.

Given that the foreign persons are immediate family and that the country involved in Iraq where terrorism remains a reality and human rights problems are widespread, AG ¶ 8(a) cannot reasonably apply. AG ¶ 8(a), which provides:

(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.

Apart from his U.S. citizenship and ties to his adult children from his first wife, Applicant does not have significant ties to the United States that could overcome the risk of undue foreign influence under AG ¶ 8(b), which states:

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant listed his present employment as of December 2014 as a linguist with a federal contractor and indicated in February 2015 that he was living in a hotel. He was in a "holding pattern" until he deployed to Iraq as a linguist. He owns no property in the United States. He maintains his citizenship with Iraq. Within the ten years preceding his SF 86, he married an Iraqi resident citizen in Iraq, had a daughter in Iraq, and lived in Iraq for two years. To the extent that he developed ties to the United States after he came as a refugee in 1996, his more recent ties to Iraq create an unacceptable vulnerability to undue foreign influence.

AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," could describe his communications with his sister and brothers-in-law, but not enough is known about the nature of his contacts with them to fully mitigate the risk of undue foreign influence raised by his contacts with these family members. AG ¶ 8(c) cannot reasonably apply to his daily contacts with his spouse, daughter, and stepdaughter.

AG ¶ 8(d), "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," is not established. Applicant's spouse's home in Iraq is a significant asset, not only in terms of its market value, but because it provides shelter for his spouse, daughter, and stepdaughter, and for Applicant when he is in Iraq. Applicant has not overcome the foreign influence security concerns.

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or

sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government met its burden of establishing a *prima facie* case for disqualification because of unaddressed financial delinquency for which Applicant is legally liable. It does appear that the collection debt alleged in SOR ¶ 2.e is the same debt in SOR ¶ 2.a. However, Applicant admits, as shown on his credit record, that he owes \$9,689 in past-due debt after having been afforded a financial fresh start by a Chapter 7 bankruptcy discharge in 2003. Disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the security concerns raised by his delinquent debts. Under the AG effective for any adjudication on or after June 8, 2017, a record of undisputed consumer delinquency may be mitigated under one or more of the following conditions under ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Mitigating condition AG ¶ 20(a) has limited applicability in that some of the debts were not incurred recently. The cable debt (SOR ¶ 2.b) is from 2009. It is unclear when Applicant (or his ex-wife) defaulted on the car loan (SOR ¶ 2.d). As of December 2014, the creditor was reporting an \$8,337 past-due balance with a date of last activity February 2010. The debt alleged in SOR ¶ 2.a is from 2012 while the insurance debt alleged in SOR ¶ 2.f is from 2014. However, AG ¶ 20(a) does not mitigate the security concerns raised by

unaddressed delinquency. Although Applicant indicated during his February 2015 interview with the OPM investigator that he would pay his delinquent debts, there is no evidence of any payments. Neither AG ¶ 20(c) nor AG ¶ 20(d) apply without some evidence of credible efforts to resolve his debts. Assuming Applicant's ex-wife handled the payments on his accounts, and it was her car that was repossessed, Applicant remains legally liable for the debts in his name. Low income could trigger AG ¶ 20(b), but Applicant provided no details about his income or expenses from which I could conclude that he acted responsibly, which includes keeping himself apprised of his financial liabilities and remaining in contact with his creditors. If the car loan default is from 2010 as his credit report indicates, Applicant had enough money at that time to cover his payments on the car loan. He reportedly gave his current spouse \$90,000 in 2010 toward the construction of her home in Iraq. Applicant has yet to mitigate the financial considerations security concerns.

Guideline E: Personal Conduct

The concerns about personal conduct are articulated 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant responded negatively on his December 2014 SF 86 to relevant inquiries concerning any foreign financial interests held by him, his spouse, or dependent children (SOR ¶ 3.a); any financial support to a foreign national (SOR ¶ 3.b); any foreign government contact by him or any member of his immediate family in the last seven years (SOR ¶ 3.c); and any foreign travel by him in the last seven years (SOR ¶ 3.d). He also responded negatively to financial record inquiries concerning any delinquency involving routine accounts (SOR ¶ 3.e). The record establishes that Applicant's spouse owns a home in Iraq, that he provided her \$90,000 toward its construction, that his spouse is employed by the Iraq government, that he traveled to Iraq for stays from July 2010 to June 2011 and February 2012 to February 2014, and that he owed \$9,689 in seriously delinquent consumer-credit debt as of December 2014. A reasonable inference of deliberate falsification could be inferred based on these facts. However, when Applicant answered the SOR allegations, he claimed in each instance that he misunderstood the question and marked the wrong box.

The DOHA Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a

whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). Applicant did not elaborate as to the nature of his claimed misunderstanding. The summary of his interview with the OPM investigator shows that he was asked about the omission of foreign contacts, foreign travel, and financial delinquencies. He claimed that he did not list foreign contacts because he did not think it included family members. As to why he did not list his travel to Iraq, Applicant responded that he had listed an Iraq address for 2012 to 2014 and thought it would suffice. He denied knowing about any past-due debts and explained that his first wife paid all bills in a very organized manner.

Although Applicant stated under the residence section of his SF 86 that he was in Iraq from April 2012 to June 2014 visiting his wife and daughter, he did not disclose anywhere on the form that he was in Iraq from July 2010 to June 2011. He did not provide a credible explanation for not disclosing that his spouse owned a home in Iraq that was constructed with his financial support or that his spouse worked for the Iraq government. As for his failure to report his financial delinquencies, Applicant claimed in February 2015 he was unaware of them, but he was able to recall that he owed a debt for a car that his ex-wife had voluntarily surrendered. Even if he assumed that his ex-wife was making payments toward the deficiency balance, he knew that the vehicle had been repossessed, and he responded "No" on his SF 86 to a financial record inquiry concerning whether he had any possessions or property voluntarily repossessed or foreclosed in the last seven years. The loan was in his name. Applicant has failed to persuade me that the omissions were unintentional or inadvertent. Disqualifying condition AG ¶ 16(a) applies. It provides:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Regarding his foreign travel, his spouse's foreign financial assets, and her foreign government employment, Applicant disclosed his trips to Iraq, and his spouse's home ownership in Iraq with his financial support during his February 2, 2015. There is no indication that he was asked about or that he volunteered that his spouse was employed by the Iraq government, and he had to be confronted about the delinquent debts on his credit record during that interview. He was not prepared to provide details of his other foreign contacts, including to his sister. During a February 25, 2015 interview with a government investigator, Applicant completed forms detailing the citizenship and occupations of his foreign relatives and the frequency of his contact with them. He also provided a detailed

account of his foreign travel. He revealed to the investigator that his spouse was providing him with some financial support that he relied on to meet his expenses. There is no evidence that Applicant acted to conceal information about his foreign ties. His rectification was sufficiently prompt to consider AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” but at least with respect to the delinquencies, he had to be confronted with the information.

Applicant’s falsifications were limited to one form but involved several inquiries, and the information omitted was relevant and material to assessing his security clearance eligibility. AG ¶ 17(c), “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or that it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” has minimal applicability. Furthermore, given Applicant’s failure to acknowledge the intentional nature of his omissions in any aspects, AG ¶ 17(d) is not established. AG ¶ 17(d) provides:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant has yet to demonstrate that he can be counted on to comply with his obligation of full candor.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).³ The analysis under Guidelines B, F, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication involves an evaluation of an applicant’s judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant is applying for a security clearance for work as a linguist in Iraq. His willingness to place himself in potentially dangerous situations on behalf of the United States weighs in his favor. He served as a

³ The factors under AG ¶ 2(d) are as follows:

(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.

linguist in Iraq from 2006 to 2009 with no issues. However, his present situation is different in that he is now married to an Iraqi citizen who works as an engineer for the government of Iraq. He has a young daughter who is an Iraqi resident citizen. People act in unpredictable ways when faced with choices that could be important to a family member.⁴ Present geopolitical realities over which Applicant has no control create an unacceptable security risk because of his close bonds to, and ongoing contacts with very close family members in Iraq. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.) Based on the record before me, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraphs 2.f-2.g:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.e:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge

⁴ As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member."