



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01334

Appearances

For Government:
Adrienne Driskill, Esq., Department Counsel

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

February 14, 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 in Iraq. His request for national security eligibility and a security clearance is granted.

Statement of the Case

On June 30, 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 Guideline B.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 on September 26, 2016, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on October 17, 2016. The case was assigned to another administrative judge on October 25, 2016. The case was reassigned to me on February 6, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 23, 2017, scheduling the hearing for April 11, 2017. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 5, which were admitted without objection. The Government also submitted Government Exhibit 6 for Administrative Notice. Applicant testified on his own behalf and submitted Applicant Exhibits A through H, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 19, 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 six page summary of the facts, supported by five Government documents pertaining to Iraq, identified as Government Exhibit 6. 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. 14-15.)

The Government also moved to withdraw allegation 1.a in the SOR. This was due to the fact that Applicant's father passed away on July 12, 2016. The motion was granted and allegation 1.a is withdrawn. (Answer; Tr. 8.)

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old and single. He is applying for a security clearance in connection with his employment with a Defense contractor as a linguist.

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.

Paragraph 1 – Guideline B (Foreign Influence)

Applicant was born in Iraq in 1964. He is of Kurdish descent. He received a college degree in Iraq in 1999. Beginning in 2003, after the invasion of Iraq, Applicant worked with the Multi-National Force in Iraq as a linguist. He worked with various American units in Iraq until 2008. (Applicant Exhibits G and H; Tr. 21, 23.)

Applicant immigrated to the United States under a Special Immigrant Visa (SIV) in 2008. He was granted this status under a program that allowed a small number of translators, who had worked with the U.S. military in Iraq, and met certain requirements, to immigrate to the United States. One requirement of the program is a recommendation by a general officer in Applicant's chain of command. In Applicant's case this was a U.S. Air Force major general. That officer's letter of recommendation is found on page 2 of Applicant Exhibit F. In that letter the general states, "[Applicant] has earned numerous commendations from the military team leaders with whom he has worked, both for the quality of his work and for his courage." (Applicant Exhibit B; Tr. 20-22.)²

After immigrating to the United States, Applicant worked as a linguist/role player at a military base where he helped train troops being prepared for foreign deployments. He did this work from 2009 to 2014. He was unemployed for three months in 2015 and used that time to visit his family in the Kurdistan Region of Iraq. He began working for a Defense contractor in 2015 and returned to Iraq for two more years as a linguist. (Tr. 18, 62-66.)

Applicant became a naturalized American citizen on October 23, 2013. Applicant was very happy the day he became an American citizen. He immediately obtained an American passport and used this passport when traveling to Iraq to visit his family in 2015. (Answer; Government Exhibit 1 at Sections 8 and 17; Applicant Exhibit A; Tr. 24-26.)

Applicant's parents are deceased. He has one older brother, three younger brothers, and three sisters. None of his relatives have knowledge of Applicant's job, or the fact that he is applying for a security clearance. (Government Exhibit 1 at Section 18.)

The status of Applicant's siblings is as follows:

Applicant's older brother, who was born in 1963, works for an Iraqi ministry. He lives in Baghdad. Applicant has contact with this brother over the internet or by text once or twice a month. He last had personal contact with this brother when they met at an airport in Iraq in 2016. (Tr. 27-32, 41.)

The first of Applicant's younger brothers was born in 1968. He works for a second Iraqi ministry as a liaison between the central government and the Kurdistan

² See Department of State, *Special Immigrant Visas (SIVs) for Iraqi and Afghan Translators/Interpreters*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html> (accessed February 8, 2018).

Region of Iraq. He lives in Baghdad. Applicant has telephone or internet contact with this brother once or twice a year. He last had personal contact with this brother in 2015. (Tr. 32-37.)

The second of Applicant's younger brothers was born in 1969. He is a medical doctor. He lives in the Kurdistan Region of Iraq, where he works for a third Iraqi ministry as an instructor. Applicant has telephone or internet contact with this brother once or twice a year. He last had personal contact with this brother in 2015. (Tr. 37-41.)

The third of Applicant's younger brothers was born in 1973. He works for a fourth Iraqi ministry in the Kurdistan Region of Iraq. Because of the difference in their ages, Applicant has very little contact with this brother, having only two contacts since Applicant immigrated to the United States in 2008. He last had personal contact with this brother in 2015. (Tr. 41-44.)

As stated, Applicant has three sisters. His oldest sister was born in 1966. She is employed by a fifth Iraqi ministry in Baghdad. Her husband works for this ministry as well. Applicant contacts this sister twice a year. He has spoken to her husband twice since 2008. He last had personal contact with this sister in 2015. (Tr. 44-45, 50-52.)

Applicant's middle sister was born in 1971. She is employed as a teacher by a municipality in the Kurdistan Region of Iraq. Applicant contacts her twice a year. He last had personal contact with this sister in 2015. (Tr. 45-46.)

Applicant's youngest sister was born in 1980. She is also employed as a teacher by a municipality in the Kurdistan Region of Iraq. Applicant had monthly contact with her until his father died. Since then the frequency of contact has decreased. He last had personal contact with this sister in 2015. (Tr. 46-48.)

Two people who wrote recent letters of recommendation for Applicant also have knowledge of the SIV process, since they assisted Applicant with his application and have maintained contact with him since he moved to the United States. The comments of a retired lieutenant colonel (LTC A) in the Army are informative on the situation regarding Applicant's siblings' employment with the Iraqi government:

During the SIV process, we were fully aware that both [Applicant] and various of his siblings were or had been Iraqi government employees. This was quite common among the SIV applicants, given the extent to which the government accounts for so much of the economy in Iraq. A large portion of professionals and people with university and advanced degrees work for various government ministries. (Applicant Exhibit E at 1.) (See Tr. 69.)

Applicant renounced his Iraqi citizenship when he became an American citizen. He has no Iraqi identification of any type. (Answer; Tr. 25-26.)

Applicant filled out three counterintelligence-focused security screening questionnaires in 2010, 2012, and 2015. (Government Exhibits 3, 4, and 5.) He was also interviewed by an investigator from the Office of Personnel Management in 2015. (Government Exhibit 2.) The information provided by Applicant during these occasions was consistent with his testimony during the hearing.

Mitigation

Applicant is proud to be an American citizen, and to have assisted the U.S. military in Iraq. He feels no sense of loyalty to Iraq, only to the United States. He stated, “[M]y future [is] in this country. I have no - - I have nothing in Baghdad or Iraq.” (Answer; Tr. 55.)

Applicant came to the United State with very little, and is proud to be a self-made person. He has saved the money he made working as a linguist and has American bank accounts. He has no property of any kind in Iraq. (Applicant Exhibit D; Tr. 23.)

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 2008. Applicant’s work during that time is described by one officer as participation “in numerous prisoner apprehensions, security missions and reconnaissance missions while on patrols.” He also worked at an entry control point into the International Zone of Baghdad where “he has showed dedication to duty, loyalty, bravery, friendship and sacrifice.” (Applicant Exhibit F at 1.) The other letters and certificates in Applicant Exhibit F are of a similar nature.

LTC A described in more detail what Applicant did as an interpreter, “The work performed at this checkpoint could be quite dangerous since the interpreters, who were unarmed, were in constant movement parallel to the line of cars waiting for clearance to enter the International Zone. Insurgents attacked the checkpoint a number of times.” It is also noted that LTC A personally vetted Applicant for the SIV program. (Applicant Exhibit E at 1.)

An American civilian who worked with the American Embassy in Iraq also wrote a recent letter of recommendation for Applicant. He confirmed the facts stated by LTC A about the dangers Applicant faced in his work at the checkpoint into the International Zone. This person was also involved in helping Applicant obtain his SIV. The writer has maintained contact with Applicant since his entry into the United States. The writer states:

I have no reservations whatsoever in standing behind [Applicant]. He is a good man and a solid individual for whom I have genuine respect. I take genuine satisfaction in having assisted him in obtaining his SIV and I take almost as much pride as [Applicant] does in his having obtained his U.S. citizenship. I truly believe that [Applicant] is a loyal American and worthy of our trust. (Applicant Exhibit E at 3-4.)

The linguist manager for an American Army unit wrote a letter of recommendation for Applicant in 2015. He states, “[Applicant] has taken great risks with his personal safety and safety and welfare of his family by his continued support of Coalition Forces.” (Applicant Exhibit E at 5-6.)

Applicant is very aware of his responsibilities if he obtains a security clearance, particularly if advances are made towards him or his relatives. He is also aware of his employer’s requirements concerning foreign travel. He follows all the rules and makes sure his employer knows when and where he is going. (Tr. 53-56, 69-70.)

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. (Government Exhibit 6: Attachments.)

Policies

When evaluating an applicant’s suitability for a national security eligibility and 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 national security eligibility 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 national security eligibility 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. Two 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; 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.

Applicant has four brothers and three sisters who live in Iraq. Several of them work directly for the Iraqi government, the others for a local government in the Kurdistan Region of Iraq. 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).³

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

³ 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).

(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.

Applicant has minimal contact with his family members who live in Iraq. He last saw them in 2015, when he was between jobs. Other than that his contact with his family has been minimal since 2003. 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.

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. AG ¶ 8(e) applies.

Applicant served in Iraq without any indication that he had breached security policies or procedures. There is considerable evidence that he acted courageously in a particularly difficult and dangerous job. While that fact is not normally a factor in granting a clearance, the Appeal Board stated in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) the following:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures significant probative value for purposes of refuting, mitigating or extenuating security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See e.g. ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the Applicant had made a significant impact to the national security. See e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation.

I have carefully considered the fact that Applicant's family members have jobs with various governmental entities in Iraq. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. Applicant has been subject to considerable screening for his various jobs, as well as his entry into the United States under the SIV program. He consistently has identified his siblings and their jobs. I also note the fact that Applicant's correspondents state the prevalence of the Iraqi government in the job market. He was admitted to the United States under the SIV program, which had strict rules. It is particularly telling that two Americans who helped Applicant through the process years ago remain his friends, and support him wholeheartedly with current letters of support. The mitigating evidence

makes clear that Applicant behaved courageously while helping the coalition forces in Iraq in a substantial way. Applicant has completely mitigated the security significance of the presence of his relations in Iraq. Paragraph 1 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 Guideline B 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 and raised in Iraq. From 2003 through 2008, and again from 2015 through 2017, he worked successfully for coalition forces in Iraq under frequently dangerous conditions. 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 sense of loyalty to the United States.

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 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:	Withdrawn
Subparagraphs 1.b through 1.d:	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Wilford H. Ross
Administrative Judge