



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



In the matter of:

ISCR Case No. 16-01423

Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esq., Department Counsel

For Applicant: *Pro se*

08/02/2018

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from family connections in Iraq. He mitigated the personal conduct security concerns. National security eligibility for access to classified information is denied.

History of Case

On March 30, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 22, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence), and Guideline E (Personal Conduct). The action was taken under Executive Order 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 effective within the DOD

after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR in writing on August 5, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on February 13, 2017. The case was scheduled for a hearing on July 25, 2017. Applicant notified DOHA that he was deployed and unable to attend the hearing. That hearing was continued and the case was reassigned to me on February 21, 2018. DOHA issued a second Notice of Hearing on March 14, 2018, setting the hearing for April 18, 2018. On that day, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Exhibits (AE) A and B into evidence. All exhibits were admitted without objection. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on May 1, 2018.

Procedural Ruling

I took administrative notice of facts concerning Iraq. Those facts are set forth in the following: Government's Request for Administrative Notice for Iraq, marked as GE 4. These documents are included in the record. (Tr. 19-20) The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 33 years old and unmarried. He was born in northern Iraq and attended high school there. In April 2008, he, his twin sister, and her boyfriend left Iraq and traveled to Turkey, so his sister could marry her boyfriend, in contravention of their father's wishes. Applicant said that his father was extremely upset and angry with both him and his sister over this matter. She eventually went to live in Italy and he reconciled with his father. In March 2009, Applicant immigrated to the United States as a refugee on a United Nations' visa. (Tr. 22-27, 30-31; GE 3)

After arriving in the United States, Applicant lived with his uncle for eight months until he found employment. He subsequently worked at a restaurant, at a department store, at a convenience store, and at a hospital. He has been unemployed for periods of time. He attended a U.S. college for one semester. Between 2010 and 2012, he periodically worked some weeks with the U.S. Army as a role-player translator and cultural advisor. In 2012, he returned to Iraq to visit his family for four months after his grandmother died. He became a U.S. citizen in February 2015 and obtained a U.S. passport the following month. In March 2015, Applicant applied for a position as a Kurdish linguist for a defense contractor. He speaks four languages: Turkish, Kurdish, Arabic, and

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

English. In May 2015, a government investigator interviewed Applicant about his background and the information in his March 2015 e-QIP. (Tr. 32-35; GE 2)

In February 2017, Applicant obtained a one-year contract with a defense contractor to work as a linguist. In early June 2017, he deployed to northern Iraq to begin his job, and returned home in late July 2017 for another background interview. He was home for 17 days, and then returned to Iraq. He remained there until he returned to the United States for this hearing, and intended to return to Iraq after it. His family knew he came to Iraq in 2017 because he telephoned them and said he obtained a translating job there. He did not tell them the name of his employer. He has not seen his family since he started working in Iraq. (Tr. 26-29, 44; AE A) Applicant has not encountered a dangerous situation in this position. (Tr. 66)

While in Iraq, Applicant worked for an Army training unit from a coalition Western country. An officer of that Army wrote a complementary letter of recommendation for Applicant. He stated that during the months that he worked with Applicant he found him to possess excellent skills and dedication. He said that Applicant was "one of the best" translators he has worked with. (Tr. 24; AE B)

Applicant's parents were born in Iraq. His mother is 59 years old and his father is 62 years old. They are citizen residents of northern Iraq. His mother is a homemaker and his father owns a private business. Neither have any connection to the Iraqi government. (Tr. 37-38, 40; GE 2) Applicant has four siblings: three brothers and a twin sister. All three brothers are citizens and residents of Iraq. They are unmarried and reside with their parents. His oldest brother works in sales; his second oldest brother attends school; and his younger brother also works in sales. None of them have any affiliation with the Iraqi government. Applicant emphasized that his family lives in a safe neighborhood in a suburb of a modern city. His sister lives in Italy. (Tr. 40-42, 44)

After starting his position with a defense contractor in February 2017, Applicant spoke to his mother once every two or three months during that year. Since January 2018, he has spoken to her once. He does not speak to his father often, although he spoke to him during February 2018. He speaks to his brothers occasionally, if they are at home when he telephones his mother. He is not concerned about his family's safety because they live in a good area in northern Iraq. He does not use social media often. He is cautious about disclosing information. (Tr. 44-46, 55-56) He said that his employer permitted him to inform his family that he is living in Iraq. He is allowed to speak to them by phone. He would not be permitted to tell them that he has a security clearance. (Tr. 57)

In response to a question on his 2015 e-QIP inquiring into his foreign contacts, Applicant disclosed his parents, but did not disclose that he had three brothers who are citizens and residents of Iraq. In response to a question on the 2015 e-QIP inquiring about providing financial support to any foreign national, he did not disclose that he had sent money to his family in the past. (GE 1)

During a background interview in May 2015, Applicant fully disclosed information about his four siblings to the investigator. (GE 3) During a July 2015 counterintelligence interview, in response to a specific question about providing gifts or money to non-U.S. persons, Applicant stated that he had sent between \$200 to \$500 to his parents, eight or nine times, to help with their living expenses. He said he failed to include the information in the e-QIP because he answered the questions regarding foreign relatives quickly and did not carefully read the section. (GE 2) In his August 2016 Answer, he stated that he has sent \$400 to \$700 to his family three or four times a year for the last three years. (Answer) He stated that the reason he sent his family money was because the Iraqi government was not paying people for a long time so his father's business suffered. (Tr. 50)

While testifying, Applicant again explained that he was given two days to complete the e-QIP. He stated that he did not read the questions carefully because he was in a hurry to finish it. He did not intentionally withhold information from the government. (Tr. 47-48, 51-52)

Applicant's assets are in the United States. He has about \$55,000 in a U.S. bank account. He does not own property in the United States. He does not have assets in Iraq. (Tr. 27, 54) After he obtained his current linguist position, he relinquished his apartment to save money. He does not have a residence in the United States because he lives full-time in Iraq while working for a defense contractor. He uses a friend's address for mail. (Tr. 52-54) His loyalty is to the United States. (GE 2)

Iraq

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Iraq, as outlined in GE 4, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Iraq. The Islamic State of Iraq and the Levant (ISIL or Islamic State) controls some of the country's territory. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Iraq should be avoided. Additionally, human-rights related problems including disappearances, torture, denial of fair public trial, and limits on freedom of speech and expression have been noted.

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

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 includes 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.

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, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²

Applicant has ongoing familial connections with his parents and three brothers, who are citizen residents of Iraq. He periodically provides financial support to them. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Iraq may seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationship with his family members also creates a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help family members living in Iraq. The evidence is sufficient to raise both of the above disqualifying conditions.

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on these facts:

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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; and

(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.

AG ¶¶ 8(a) and (c) have limited applicability. Applicant has ongoing contact with his parents and siblings, who are citizen residents of Iraq. He continues to provide periodic financial support to them. Because of those connections, he is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are citizens of Iraq] could create a risk for foreign influence or exploitation."

The evidence establishes limited mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has some connections to the United States. He left Iraq in 2008. He immigrated to the United States in 2009 and became a U.S. citizen in 2015. He has an uncle living in the United States. He has a financial account worth \$55,000 in a U.S. financial institution. He attended college here for a short time and worked for several different employers after arriving in the United States. He professed allegiance to the United States and not Iraq. While those facts demonstrate some relationships to the United States, they are insufficient to conclude that his ties here are deep or longstanding and that he can be expected to resolve any conflict of interest, involving to his family in Iraq, in favor of the U.S. interest. Accordingly, he did not fully mitigate the raised security concerns.

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

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.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant acknowledged that he did not disclose, in his March 2015 e-QIP, that he had three brothers residing in Iraq and that he provided some financial support to his family there. He denied that he intentionally misled the Government as alleged in SOR ¶¶ 2.a and 2.b. When a falsification allegation is controverted or denied, as in this case, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred.³

Applicant's explanation, that he did not intentionally attempt to deceive the Government by failing to disclose the above requested information in his e-QIP, was credible. He stated that he was in a hurry to complete the e-QIP in two days and failed to carefully read the questions before answering them. He fully disclosed the information in two subsequent interviews. After listening to Applicant testify and observing his demeanor, I find his explanation for failing to disclose the specific information alleged in SOR ¶ 2.a and SOR ¶ 2.b demonstrated carelessness, but not an intentional attempt to falsify his 2015 e-QIP. Applicant successfully refuted the personal conduct security concern. Both allegations are found in his favor and a discussion of the applicability of mitigating conditions is not pertinent.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004), explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal results of his family situation.

There is some evidence weighing in favor of granting Applicant a security clearance. He is a mature person, who immigrated to the United States in 2009. He provided periodic weekly translator and cultural advisor role-playing services for the U.S. Army between 2010 and 2012. Since early 2017, he has successfully worked as a translator in Iraq for a defense contractor. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He expressed loyalty to the United States.

However, there are facts that outweigh those positive factors. Applicant has limited long-term connections to the United States. He has been a citizen for about three years. He has one uncle living here, but no immediate family members. He does not have a permanent residence and relies on a friend for a mailing address. He has \$55,000 in a bank account and has sent about \$5,000 to his family over the past couple years. Applicant, understandably, maintains continuing and strong familial ties to Iraq, and has done so since his arrival.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant mitigated the security concerns pertaining to personal conduct, but not those relating to foreign influence. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraphs 2.a and 2.b:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge