



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



In the matter of:)
)
) ISCR Case No. 16-01446
)
Applicant for Security Clearance)

Appearances

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

07/20/2018

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated the foreign preference and foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On July 5, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C (foreign preference) and B (foreign influence). On August 29, 2016, and November 4, 2016, Applicant responded to the SOR, and elected to have the case decided on the written record in lieu of a hearing.

On November 29, 2016, the Government submitted its written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. On January 10, 2017, Applicant received the FORM, and was instructed to file any objections to this information, or to supply additional information within 30 days of receipt. Applicant did not submit any information within the

30-day period. On October 1, 2017, DOHA assigned the case to me. The Government exhibits included in the FORM are admitted in evidence without objection.

Department Counsel requested that I take administrative notice of certain facts about Iraq. Applicant did not object, and the request is granted. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that the risk of terrorist activities in Iraq remains extremely high. No section of Iraq is safe or immune from violence, and the potential exists throughout the country for hostile acts, either targeted or random, against U.S. and other Western nationals at any time. The country's human rights record remains poor.

Findings of Fact

Applicant is a 38-year-old linguist employed by a defense contractor since January 2015. He was born in Kurdistan, Iraq to Iraqi parents. He spent his formative years in Kurdistan, where he was educated, and ultimately received a bachelor's degree in 2017. Applicant has never married and has no dependents. (Items 3, 4)

Applicant has a long history of service with the U.S. Armed Forces. The U.S. State Department granted him a Special Immigrant Visa (SIV)¹ in 2008 for his "12+ months of exceptional service alongside U.S. Forces." (Item 4) With his SIV and Government sponsorship, Applicant immigrated to the United States in 2008. He became a U.S. citizen in 2014. (Items 3, 4) He immediately applied for and received his U.S. passport that same year. (Item 3)

The SOR alleged and Applicant admitted a number of Iraqi connections. Specifically, Applicant's father and brother are resident citizens of Iraq, he has a brother who is a citizen of Iraq and resident of the United States, and he has a brother who is a citizen of Iraq and resident of Germany. Additionally, Applicant's stepmother, stepbrothers, and stepsisters are resident citizens of Iraq, and he has a stepbrother who is a citizen of Iraq and resident in Germany. Lastly, Applicant has friends who are resident citizens of Iraq. (Items 1, 2)

Applicant's father is retired and his mother is deceased. There is no evidence that any of his family members, extended family, or friends work for or are associated with the Iraqi government. Applicant has monthly contact with his father and contact to a lesser extent with his siblings. (Item 4) Before Applicant's current employer hired him as a linguist, he held a number of positions in support of U.S. troops in the war on terrorism. From 2004 to 2013, he served in various capacities in the United States, Iraq, and Afghanistan as a cultural advisor, a linguist, and a role player with U.S. troops. (Item 4) At the time he submitted his November 2016 SOR answer, he had been deployed to Iraq as a linguist since March 2015. (Item 2)

¹ The Special Immigrant Visa program is available to persons who worked with the U.S. Armed Forces or under Chief of Mission authority as a translator or interpreter in Iraq or Afghanistan. This program, which offers visas to up to fifty persons a year, remains active. See <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html> for further information.

The SOR alleged and Applicant admitted that he held an Iraqi passport issued in 2014 with a 2022 expiration date. (Item 1) He surrendered his Iraqi passport to his security manager in March 2015. (Item 1)²

Applicant stated that he would immediately report any contact by a foreign government, intelligence or security service, or terrorist organization, or any attempt to blackmail or coerce him. (Item 4) He professed his undivided loyalty to the United States in his security clearance application:

DUE TO CONTRACT REQUIREMENTS I WILL BE WORKING AND RESIDING IN Iraq with US ARMY as a Linguist. I am here fully willing and from deep in my heart faithfully and loyally support my US Forces and put my life on the line with their(s) not to betray, act lazy and draw my duties, I promise to devote all my skills and abilities for a better success and achieving outstanding results. I and my family have always been supportive to the US Military and the US Government and any organization or association that serves the US Government. This is a promise I am committed to go on with and never give up. (Item 3)

Applicant stated during a February 2015 Counterintelligence-Focusing Screening Questionnaire that he wished he were born in the United States because everything about him is westernized. (Item 4)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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

² When Applicant's SOR was issued in July 2016, the former DOD Directive 5220.6 was in effect which specifically listed possession of a foreign passport as a disqualifying condition under AG ¶ 10(a)(1). Since then, the Directive has been amended and new Guidelines were implemented effective June 8, 2017. The new Guidelines removed this provision thus negating this allegation as a security concern. In any event, Applicant surrendered his passport to his security manager.

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.”

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.” 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Guideline B, Foreign Influence

The security concern 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. The following 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's immediate family, stepmother, stepsiblings, and friends are citizens of Iraq and except for two brothers and a stepbrother are residents of Iraq. One brother and a stepbrother are residents of Germany and one brother is a resident of the United States. None of his family members or friends work for or are associated with the Iraqi government. The potential for terrorist violence against U.S. interests and citizens remains high in Iraq, and Iraq continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

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

I considered the totality of Applicant's ties to Iraq. Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or

country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.³

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense for many years. He stated that he would immediately report any contact by a foreign government, intelligence or security service, or terrorist organization, or any attempt to blackmail or coerce him. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security.⁴ In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that 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 at 2-3 (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 contribution 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

³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

⁴ ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

It not surprising that Applicant, having been born, raised, and educated in Iraq, would have relatives and friends from Iraq with whom he maintains a relationship. With that said, he has demonstrated his loyalty to the United States since at least 2004 at times putting his life at risk. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

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(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

Applicant's work with the U.S. military in Iraq earned him a Special Immigrant Visa. He returned to Iraq and Afghanistan several times since his immigration to work with the U.S. military. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."⁵ The complicated state of affairs in Iraq places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns. Foreign preference concerns are no longer relevant.

⁵ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

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 C:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a-1.i:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert Tuidier
Administrative Judge