



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



In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 16-01710
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

08/24/2018

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns about Applicant's ties to family members in Iraq. His request for a security clearance is granted.

**Statement of the Case**

On March 22, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.<sup>1</sup>

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On May 23, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under the adjudicative guidelines<sup>2</sup> for foreign influence (Guideline B) and foreign preference (Guideline C).<sup>3</sup> Applicant timely responded to the SOR (Answer) and requested a hearings.

I received this case on April 6, 2018, and convened the requested hearing on May 30, 2018. The parties appeared as scheduled. Department Counsel presented Government Exhibits (GX) 1 – 5. GX 1 and 3 were admitted without objection. GX 4 and 5 were proffered for administrative notice purposes. Applicant testified and submitted Applicant's Exhibits (AX) A – M, all of which were admitted without objection. DOHA received a transcript of the hearing (Tr.) on June 8, 2018.

Applicant's counsel objected to the admission of GX 2, a summary of a personal subject interview (PSI) conducted on April 22, 2015, for lack of foundation and lack of authentication. (Tr. 11 – 12) Department Counsel withdrew GX 2 and subsequently declined an opportunity to *voire dire* the Applicant about the contents of GX 2 to establish a foundation for admissibility of the PSI. (Tr. 13 – 14, 57) GX 2 was not admitted into evidence and I have not considered it in reaching my decision. GX 2 is included in the record solely for reference on appeal.

### **Findings of Fact**

Under Guideline B, the Government alleged that Applicant's mother, three brothers, four sisters, a nephew, and his cousins are citizens of, and reside in, Iraq (SOR 2.a). The Government also alleged that one of his brothers works for the Iraqi Ministry of Education (SOR 2.b); and that Applicant has provided \$1,500 to his mother, a brother, and his nephew (SOR 2.c).

In response to the SOR, Applicant denied the Guideline B statement of security concern, but admitted SOR 2.a – 2.c. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 39 years old. He was born, raised, and educated through high school in Iraq. He left Iraq in 1999 and immigrated to England, where he continued his education and worked. In December 2008, Applicant left England and moved to the United States on a K-1 fiancé visa. He married his current wife, a naturalized U.S. citizen originally from Iraq, on his arrival in the United States. His wife's parents and siblings all live in the United

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<sup>2</sup> At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence (DNI) issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

<sup>3</sup> At the hearing, Department Counsel withdrew the allegations under Guideline C. Those allegations became moot when DNI issued the current version of the adjudicative guidelines that are controlling in this case.

States and are naturalized U.S. citizens. They have two children, ages 10 and 7, both of whom are native-born U.S. citizens. (Gx. 1; GX 3; Tr. 52 – 53)

Applicant is one of eight children (four boys and four girls). Applicant is the only member of his immediate family not living in Iraq. Applicant's mother is 87 years old, in poor health, and lives with her only single daughter. One brother died of cancer in 2016. The last time Applicant saw his mother or any of siblings was at his brother's funeral in 2016. Applicant's only regular contact with his family is with his mother and with the sister caring for her. Applicant last spoke to any of his brothers more than a year ago, and he estimates that, aside from his visit in 2016, he has spoken with them fewer than six times since leaving Iraq in 2012. None of Applicant's sisters work outside the home, and none of his surviving brothers work for the Iraqi government or the Iraqi military, although Applicant's deceased brother was a teacher employed by the Iraqi Ministry of Education. (GX 1; GX 3; Tr. 30 – 31, 33 – 43)

Between 2011 and 2014, Applicant provided a total \$1,500 to his mother, his deceased brother, and one of his nephews. The nephew was raised by Applicant's mother after the boy's mother (Applicant's maternal aunt) died. Applicant gave his nephew the money as a wedding gift. Applicant's other gifts were made to help his mother and his ailing brother with their medical expenses. Applicant has no financial interests or bank accounts in Iraq, and he has not made any other monetary transfers to Iraq since 2014. (Answer; GX 3; Tr. 44 – 45, 60)

In the United States, Applicant owns two homes – his family residence and a rental property. He earned an associate's degree in 2015, and he has been gainfully employed since arriving here in 2008. (GX 1; GX 3; AX J – L; Tr. 25 – 26)

Applicant has worked in Iraq with the U.S. military since April 2017. As part of his hiring and approval for work overseas, he completed a counter-intelligence (CI) screening process that did not raise any concerns about his trustworthiness. He returned to the United States briefly for his hearing, and has since resumed his work in Iraq. Applicant's work regularly exposes him to hostile fire directed at the units with whom he is embedded. His performance in combat conditions has earned him recognition for his commitment to the mission, for his professionalism, and his trustworthiness. (GX 3; AX A; Tr. 26, 46, 57)

Applicant provided credible testimony about his understanding of the security concerns raised by the Government. He averred that even if his family was to be threatened in order to gain classified information from him, he would refuse and would advise his employer and his military counterparts if that occurred. (Answer; Tr. 54 – 55)

To assess properly the security significance of these facts within the adjudicative guidelines at issue, I have taken administrative notice of certain facts regarding Iraq. Among the most pertinent of these facts are that Iraq's newly and freely elected government has been unable, without assistance from the U.S. military, to quell violence that has engulfed parts of Iraq, fueled and perpetrated, initially by Al-Qaeda terrorists, as well as Sunni insurgents and Shiite militias, and more recently by ISIL. As a result, some

parts of Iraq remain wholly unstable, particularly the northern regions of Iraq affected by the civil war in Syria. Even the city of Baghdad is still subject to random acts of sectarian violence. Nonetheless, the Iraqi government remains aligned with the United States in its efforts to improve the ability of Iraqi military and police forces to combat ISIL and protect the Iraqi populous. (GX 4 and 5)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, administrative judges should follow specific applicable guidelines whenever it possible to measure a case against them as they represent policy guidance governing the grant or denial of access to classified information.

The principal purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment,

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<sup>4</sup> See Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>7</sup>

## **Analysis**

### **Foreign Influence**

Available information shows Applicant has extensive family ties who are citizens of and live in Iraq. This information reasonably raises the security concern expressed at 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.

More specifically, these facts support application of the mitigating condition at AG ¶ 7(a):

contact 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.

Large parts of Iraq remain unstable and beset by sectarian violence. The presence of Applicant’s family members presents a heightened risk that Applicant could be pressured or coerced to act contrary to U.S. interests. Although the allegation that Applicant gave money to some of his family is not per se disqualifying, it does provide an indication of how close he is to his family. The record supports application of AG ¶ 7(a). Balanced against this is the applicability of the mitigating condition at AG ¶ 8(b):

there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

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<sup>7</sup> See *Egan*; AG ¶ 2(b).

Applicant has built a life in the United States as an American citizen. He and his wife are raising their two children as Americans, and all of their personal and financial interests are here. His contacts with his family are less and less frequent, and are focused almost exclusively on his elderly mother and one sister. Additionally, Applicant has chosen a line of work that puts him directly in harm's way to support the national interest. He has been recognized by his military associates for his dedication to their mission and his performance under arduous circumstances. I found Applicant credible when he stated he would not compromise U.S. interests even in the face of threats to his family in Iraq. All of the foregoing supports mitigation of the security concerns under this guideline.

I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). For the year preceding his hearing, Applicant worked in support of U.S. interests, often at great personal risk. A recent CI screening did not raise any issue that precluded the U.S. military from approving him for work with military personnel in Iraq. Applicant has been a U.S. citizen for ten years and has built a life around his wife and children in the United States. All of the foregoing far outweighs security concerns about his family ties in Iraq. A fair and commonsense assessment of this record resolves any remaining doubts about Applicant's suitability for a security clearance.

### **Formal Findings**

Formal findings 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:	Withdrawn
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge