



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 16-01867

**Appearances**

For Government:  
Adrienne Driskill, Esq., Department Counsel

For Applicant:  
James W. Green, Esq.

February 23, 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 two family members in Iraq. He has transferred the small plot of land he owned in Iraq to his oldest surviving brother. His request for national security eligibility and a security clearance is granted.

**Statement of the Case**

On July 25, 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.<sup>1</sup> 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 October 30, 2016, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on December 29, 2016. The case was assigned to me on January 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 23, 2017, scheduling the hearing for April 13, 2017. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 3, which were admitted without objection. The Government also submitted Hearing Exhibit I for Administrative Notice. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant Exhibits A through E, which were also admitted without objection. The record remained open for the presentation of additional exhibits. Applicant submitted Applicant Exhibits F through K, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 24, 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 four page summary of the facts, supported by six Government documents pertaining to Iraq, identified as Hearing Exhibit I. 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.)

Allegation 1.a in the SOR was withdrawn on my order. That particular allegation concerned Applicant's oldest brother, who passed away after issuance of the SOR, and preparation of Applicant's Answer. (Tr. 12-13.) (See Directive ¶ E3.1.10.)

### **Findings of Fact**

Applicant admitted all three of the remaining SOR allegations (1.b through 1.d). After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 70 years old and married to his second wife. His wife is a native-born American citizen. They have two native-born American children. He also has two native-born American step-children. He wishes to retain a security clearance previously

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<sup>1</sup> 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.

granted in connection with his employment with a defense contractor as a linguist/cultural advisor. (Government Exhibit 1 at Sections 17 and 18.)

### **Paragraph 1 – Guideline B (Foreign Influence)**

Applicant was born in Iraq in 1947. He received a bachelor's degree from a university in Iraq in 1972. Applicant left Iraq in 1975 to work in another country in southwest Asia. He also has a master's in business administration degree from an American university. (Tr. 21-22, 78-79.)

Applicant first visited the United States in 1980 to take a seminar for his job. He moved permanently to the United States in 1981, and became an American citizen in 1985. (Government Exhibit 1 at Section 9; Tr. 22-25.)

Applicant and his current wife were married in 1994. As stated, they have four children together. One has graduated from college, and the other three are currently in college or graduate school. From 1984 to 2008 Applicant's wife worked in the defense industry and held a security clearance. (Tr. 25-26, 66, 71-74.)

Applicant began working with the U.S. military in late 2002/early 2003, when he was teaching Iraqi cultural awareness to military members. He accompanied American forces in the invasion of Iraq, and worked with American forces until September 2003. He was in combat situations during this period. (Government Exhibit 2 at 1, Government Exhibit 3 at 9-10; Applicant Exhibit A; Tr. 28-31, 67-69.)

In early 2005 Applicant began working in Iraq with the State Department. Applicant was a contractor at first, but after several months he began working directly for the State Department. He worked for the State Department in Iraq until 2012, when the program he was supporting ended. He did several different jobs during his time in Iraq, including as a provincial program manager.<sup>2</sup> As further described under "Mitigation," below, he was well-respected for doing his job in very difficult circumstances. (Government Exhibit 1 at Section 13A, Government Exhibit 2 at 2; Applicant Exhibit A; Tr. 32.)

Applicant saw his family in Iraq in 2013, after he left employment with the State Department. This was the first contact he had with his family since he left Iraq in 1975. He has had no personal contact with his brothers since this time, despite being deployed by his current employer in 2015 to Iraq. (Tr. 19-20, 24, 34-35.)

Applicant's parents are deceased. He has two surviving older brothers. Neither of his brothers have knowledge of Applicant's job, or the fact that he is applying for a security clearance. They live in a safe part of Iraq and Applicant has no concerns for their safety. (Government Exhibit 1 at Section 18; Tr. 51-53.)

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<sup>2</sup> See Suzanne M. Fournier, *Police Stations in Diwaniyah Province are Complete*, Iraq Reconstruction Update 5 (Mar. 1, 2006), [http://static.dvidshub.net/media/pubs/pdf\\_0763.pdf](http://static.dvidshub.net/media/pubs/pdf_0763.pdf) (accessed Feb. 18, 2018).

The status of Applicant's siblings is as follows:

One of Applicant's older brothers was born in 1943, and is retired from being a mechanic. (SOR 1.b.) He lives in southern Iraq. Applicant communicates with him by text message very infrequently, once or twice a year, primarily concerning the transfer of property Applicant owns in Iraq to this brother. He last had personal contact with this brother in 2013. (Government Exhibit 1 at Section 18; Tr. 35-37, 59.)

Applicant inherited part of a piece of property in Iraq. Applicant has no interest in this small piece of agricultural land, and is in the process of transferring it to this brother. No money was exchanged for the transfer. Applicant testified that he had no idea of the value of this property. Applicant provided a letter from the attorney in Iraq representing his brother confirming the facts of the transfer. (Answer; Applicant Exhibit F; Tr. 37-40, 60-65.)

Applicant's other surviving brother was born in 1941, and is a retired driver. (SOR 1.c.) This brother also lives in southern Iraq. Applicant last had personal contact with this brother in 2013. He does not communicate with this brother. (Government Exhibit 3 at 11; Tr. 40-41.)

Applicant was interviewed on July 8, 2015. A counterintelligence-focused security screening questionnaire was prepared based on the interview. (Government Exhibit 2.) He was also interviewed by an investigator from the Office of Personnel Management on May 1, 2015. (Government Exhibit 3.) The information provided by Applicant during both of these occasions was consistent with his testimony during the hearing.

## **Mitigation**

Applicant submitted documentary evidence showing that he was highly respected by those he worked with, both in the U.S. military and the State Department. Applicant Exhibits C, D, E, and K are letters from U.S. military members who were working with Applicant at the time of his hearing. He is described as trustworthy and committed. Applicant Exhibit K is from a U.S. Air Force captain who stated, "I cannot think of anyone better suited to serve his country as an interpreter and cultural advisor."

Applicant also provided documentation concerning his work with the State Department. Applicant Exhibit B is a current letter from a person, who worked with Applicant for two years in Iraq from 2007 to 2009, highly praising his work. The writer stated that Applicant received two State Department Superior Honor Awards for his work. (See Applicant Exhibit A.)

Applicant submitted letters of commendation dated 2012 and 2013 from senior members of the State Department assigned to the U.S. embassy in Iraq. The writer of Applicant Exhibit G, a deputy senior executive advisor on a specific program, stated, "He [Applicant] worked in very dangerous conditions and he was a critical asset to US Forces." (Applicant Exhibits H and I.)

Applicant also submitted performance appraisal reviews from his time working for the State Department. He received the overall performance rating of "Excellent," which is the highest ranking. One supervisor described Applicant's performance as "spectacular." (Applicant Exhibits J and K.)

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. (Answer; Tr. 24-25.)

Applicant is very aware of his responsibilities as a security clearance holder, particularly if advances are made towards him or his relatives. (Tr. 43-44.)

## **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. (Hearing Exhibit I: 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. Three 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;

(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; and

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

Applicant has two brothers who live in Iraq. He also owned a small parcel of land in 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 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).<sup>3</sup>

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;

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<sup>3</sup> 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).

(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

(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 2013, when he was between jobs. Other than that, his contact with his family has been virtually non-existent since he left Iraq in 1975. He is a proud American citizen, and he has an American family. 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.

The property Applicant owns in Iraq is being transferred to Applicant's brother. Applicant feels no sense of ownership in this land, which has minimal value. AG ¶ (8(f) applies.

Applicant served in Iraq for many years without any indication that he had breached security policies or procedures. In fact, there is considerable evidence that he acted courageously and effectively in particularly difficult and dangerous circumstances. 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.

The mitigating evidence, from members of the U.S. military and the State Department, make 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, which he left permanently in 1975. From 2003 through 2012, and again from 2015 through 2017, he worked successfully for coalition forces in Iraq under frequently dangerous conditions. 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