



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



In the matter of:

ISCR Case No. 16-01900

Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*¹

01/19/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his continuing family connections in Iraq, and threats he and they received while he was working with U.S. forces there. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

History of Case

On February 26, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 15, 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. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial*

¹ Applicant hired an attorney to assist him in filing an answer to the SOR. The attorney did not represent him in this hearing. (Tr. 5)

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.²

Applicant answered the SOR in writing on December 28, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on March 20, 2017. DOHA issued a Notice of Hearing on July 7, 2017, setting the hearing for August 2, 2017. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified, called one witness, and offered his Exhibits (AE) 1 and 2 into evidence. All exhibits were admitted without objection.

I took administrative notice of facts concerning Iraq, set forth in the Government's Request for Administrative Notice, which was marked Hearing Exhibit (HE) 1 and included in the record. (Tr. 15) DOHA received the hearing transcript (Tr.) on August 10, 2017.

Findings of Fact

Applicant is employed as a linguist by a U.S. defense contractor and is applying for a security clearance in connection with that work. He admitted the allegations in SOR ¶¶ 1.a and 1.b, concerning two brothers and two sisters who are citizens and residents of Iraq.

Applicant denied that he was threatened by terrorists "numerous times," as alleged in SOR ¶ 1.c. He stated that the threat occurred only once and it was to his family while he was working for the U.S. forces after graduating from high school. (2016 Answer) However, that Answer is inconsistent with Applicant's statement in a January 2011 Counterintelligence-Focused Security Screening Questionnaire (CFSSQ), in which he said that he was "threatened multiple times by anti-coalition insurgents because he worked with U.S. Forces." (GE 4) He had also stated that insurgents left letters at his family's house and left threatening messages on his cellphone. (GE 4)

Applicant is 37 years old. He was born in Iraq. He attended high school and college there, earning a bachelor's degree 2006. He never served in the Iraqi army, but from March 2005 to November 2007, he worked as a local-hire linguist supporting U.S. military operations in Iraq. He was 25 years old when he started working as a linguist. (Tr. 16-19; GE 3; Answer)

Based on his work with the U.S. forces in dangerous situations and specific threats to Applicant and his family, Army officers recommended that Applicant move to the United States. In 2007 he applied for and was granted refugee status for himself under the

² 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.

Special Immigrant Visa program for Iraqi and Afghani translators/interpreters.³ He entered the United States through Syria in March 2008. (Answer)

Between December 2008 and July 2010, Applicant worked as a Category I linguist for the U.S. forces in Iraq. He became a naturalized U.S. citizen in October 2013. He was again hired to work as a contract linguist supporting U.S. forces deployed in Iraq from April 2015 until August 2016. (GE 1; Answer) He said that he did not experience threats or hostility during his return trips to Iraq from 2008 to 2010, and 2015 to 2016. (Answer)

Since arriving in the United States, Applicant has worked and continues to work as a medical interpreter/translator for hospitals. He also worked as a sales associate for a department store. (GE 1)

Applicant has been married to his wife for three years. She was born in Iraq. She immigrated to the United States in 1995. She is a naturalized U.S. citizen. (Tr. 19; GE 1) They met in 2010 through their work as translators. (Tr. 21) All of her family members are citizens and residents of the United States, except her mother who is a U.S. permanent resident. (Tr. 40) She worked in Iraq as an interpreter for the U.S. forces from 2009 to 2010. She is currently applying for a security clearance. They married in January 2014. (Tr. 38-40; GE 1) They purchased a house with the monies they earned as translators. (Answer)

Applicant's parents were born and raised in Iraq. His father is deceased. His mother is a citizen of Iraq and resident of the United States. She lives with Applicant's brother, a citizen and resident of the United States. (Tr. 25)

Applicant has nine siblings, five brothers and four sisters. Two brothers and two sisters are citizens and residents of Iraq. One of those brothers drives a truck and the other brother is an attorney. He speaks to these brothers about once a month or less. The last time he saw them was in 2008, before he immigrated to the United States. (Tr. 25-28) Both of his sisters are teachers. He speaks to one of them every other month; he speaks to the other sister every other week. She visited him in 2014. (Tr. 28-30) These siblings were aware that Applicant was in Iraq between 2008 and 2010, and between 2015 and 2016. (Tr. 30-31.

Two of Applicant's siblings, a brother and sister, reside in Sweden. The brother living in the United States, as mentioned above, worked in Iraq as a translator for the U.S. forces. (Tr. 35; GE 2) According to Applicant's 2015 SCA, another brother is a resident of the United States,⁴ and another sister is a citizen of Iraq and a resident of the United States. (GE 1)

³ During an April 2015 interview, Applicant indicated that his family moved to Syria in 2006 after receiving threats from an unknown group. They returned to Iraq in 2009. (Answer; GE 2)

⁴ The citizenship of this brother is unknown.

Applicant submitted numerous recommendation letters and certificates of appreciation, attesting to his capabilities and contributions as an interpreter and translator. Several officers with whom he has served stated that Applicant's language skills, and his knowledge of Iraq and its culture, were an invaluable asset to their mission accomplishment. These officers consider him to be extremely responsible and trustworthy. They recognize that Applicant has put his life in danger while performing his job, including when his vehicle was bombed. (Answer; AE 2)

Iraq

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Iraq, as outlined in HE I, 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. (HE I.)

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

¶ 6: The security concern relating to the guideline for foreign influence is set out in AG

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

Applicant has ongoing and commendable familial connections with four siblings, who are residents and citizens of Iraq. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Iraq have already threatened Applicant and his family, and may seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationship with his siblings 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 these disqualifying conditions.

After the Government produced substantial 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 the facts:

(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.

Applicant has ongoing and regular communications with his four siblings, who are lifelong residents and citizens of Iraq. Without disclosing unnecessary details, Applicant

and his family have been threatened in the past due to his activities supporting U.S. interests, and he left the country as a refugee in 2007 as a result of such threats. Although Applicant provided brave and honorable support for U.S. operations in Iraq between 2005 and 2007, 2008 to 2010, and again from 2015 to 2016, he has done so under conditions that placed and could continue to place his family members in Iraq under continuing risk. He is a loyal and dedicated U.S. citizen, but the heightened risk and potential for conflict of interest situations created by his family circumstances remain insufficiently mitigated under any of these conditions.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has established some connections to the United States. In 2008, he immigrated to the United States from Iraq, and he became a U.S. citizen in 2013. Some immediate family members are citizens and/or residents of the United States. His wife is a U.S. citizen. They recently purchased a home in the United States. These facts demonstrate some deep connections to the United States; however, Applicant's two long deployments in Iraq, after becoming a U.S. citizen, also demonstrate his longstanding commitments to Iraq, the place of his birth and upbringing.

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 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 and commendable results of his family situation. There is mitigating evidence weighing in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for nine years, at least part of the time, and has been a naturalized citizen since 2013. His spouse is also a U.S. citizen. In his employment, from

2005 to 2007, 2008 to 2010, and 2014 to 2016, he provided vital and direct support to the U.S. armed forces as a linguist. He placed his life in danger, at least one time, while working there. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously. Applicant's former supervisors and colleagues assess him as loyal, trustworthy, and responsible.

However, there are significant factors that weigh against granting Applicant a security clearance. First, a Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there.⁵ Iraq is a dangerous place because of violence from terrorists and insurgents. These entities continue to threaten the Iraqi Government, the interests of the United States, U.S. Armed Forces, and those who cooperate with and assist the United States. Although the Iraqi Government is a U.S. ally, it does not fully comply with the rule of law or protect civil liberties in many instances. Applicant and his family personally experienced terrorist's threats while living in Iraq, which resulted in his family moving to another country. Second, Applicant had numerous connections to Iraq before he immigrated to the United States in 2008, and has spent substantial periods in Iraq since then. Third, he maintains regular contact with family members in Iraq. Applicant's family living in Iraq is aware that he has assisted U.S. forces in Iraq, and a family member could inadvertently disclose that assistance. A terrorist or insurgent could learn about his work with the U.S. forces and retaliate against his relatives or attempt to coerce Applicant using his relatives to compromise classified information. Fourth, an additional matter of security concern is Applicant's inconsistent statements about the threats he received because of his support for U.S. forces. I am not satisfied that he was completely frank about his description of the number and content of those threats.⁶

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, including his inconsistent answers regarding the number of times he and his family received threats from unknown groups or terrorists, I conclude Applicant failed to mitigate the significant security concerns pertaining to foreign influence. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Any doubt concerning personnel being considered for national security eligibility must be resolved in favor of the national security.

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:

⁵ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

⁶ I have limited my consideration of Applicant's inconsistent statements to my assessment of his credibility and in the whole-person concept.

Paragraph 1, Guideline B:

AGAINST APPLICANT

Subparagraphs 1.a through 1.c:

Against 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 eligibility for a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge