



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



In the matter of: )  
 )  
----- ) ISCR Case No. 16-02051  
aka ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq.

06/28/2017

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for access to classified information. The evidence is sufficient to mitigate the security concern based on his ties to Iraq, the country of his birth, from which he fled in 2006. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on April 27, 2015.<sup>1</sup> This document is commonly known as a security clearance application. Thereafter, on November 23, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was

<sup>1</sup> Exhibit 1.

clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline B for foreign influence.

Applicant, without assistance of counsel, answered the SOR on December 10, 2016. In his three-page memorandum, he admitted the SOR allegations, provided explanatory information, and he requested a hearing.

The case was assigned to me on May 1, 2017. The hearing took place as scheduled on July 11, 2017. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-4 and Applicant's Exhibits A-G. The hearing transcript was received on July 17, 2017.

### **Findings of Fact<sup>2</sup>**

Applicant, a native of Iraq, is a 48-year-old employee who requires a security clearance for his job as a linguist in support of the U.S. armed forces. His formal education includes a bachelor's degree awarded in 1998 by an Iraqi university. He is married to a native of Iraq, and they have four children, ages 21, 20, 5, and 4. His wife is a U.S. permanent resident; his four children are U.S. citizens; the two eldest children were born in Iraq and obtained U.S. citizenship through the naturalization process; and his two youngest children are native-born U.S. citizens. He has owned a home in the United States since 2011.<sup>3</sup>

Applicant and his wife separated and have lived apart since 2013, although he provides financial support.<sup>4</sup> In addition to his wife and children, his parents are U.S. permanent residents. He has three brothers, two of whom are U.S. permanent residents, and the third is a resident of Germany. Other than the sibling living and working in Germany, all of Applicant's immediate family members, including their spouses and children, live in the same U.S. community.<sup>5</sup>

Applicant has in-laws who are citizens of and residents in Iraq (SOR ¶¶ 1.a and 1.b). His mother-in-law is deceased, but he described his father-in-law as disabled, and he has not had contact with his father-in-law since 2004 or 2006, while his wife has infrequent contact with her father.<sup>6</sup> Likewise, he has had no contact with his four sisters-in-law in Iraq since he left Iraq.<sup>7</sup>

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<sup>2</sup> In making findings of fact, I have relied heavily on Applicant's hearing testimony and the counterintelligence-focused security screening Applicant went through in April 2015 (Exhibit 2).

<sup>3</sup> Tr. 31; Exhibit 1.

<sup>4</sup> Tr. 51-52.

<sup>5</sup> Tr. 54-57.

<sup>6</sup> Tr. 31-33; Exhibit 2 at 13.

<sup>7</sup> Tr. 34-35; Exhibit 2 at 1.

Applicant worked as a general manager for a company in Iraq during 1998-2003 until the commencement of the 2003 invasion of Iraq, which was the first stage of the Iraq war (also called Operation Iraqi Freedom), in which the combined forces of the United States, the United Kingdom, Australia, and Poland invaded Iraq. He then sought out and obtained employment as a local-hire linguist or translator in support of the U.S. armed forces. He was motivated to do so because, as member of the Kurdish ethnic group, he felt like a second-class citizen, he never felt like an Iraqi citizen, and he believed working on behalf of the United States was the right thing to do.<sup>8</sup>

Applicant worked as a linguist until about July 2006 when the military unit he was working with redeployed to the United States. He was then unemployed in Iraq for the next six months. He used savings to support himself and his family during that period.

In about December 2006, Applicant decided to depart Iraq because he had been targeted due to working as a local-hire linguist. His father's two-story, four-bedroom house in Baghdad was attacked by terrorists and his family was forced to flee to another residence as a result of his employment. The second story of the home was burned and destroyed. He traveled to Egypt because obtaining a visa for Egypt was relatively easy. He had about \$6,000 when he entered Egypt, and he used that money to support himself and his family during that time. He applied for refugee status through a United Nations office in Egypt in late 2007. He was then referred to the International Organization for Migration (IOM). He was interviewed by U.S. Government representatives at the IOM in about April 2008 and was granted refugee status in May 2008. He was sponsored to immigrate to the United States by a social-services organization.

Applicant received financial support from the U.S. Government and the social-services organization until he began working in August 2008 as an assistant aid for a local school. He accepted a job in July 2009 for a parking company at a major airport, and he eventually worked his way up to a supervisor position. He applied for citizenship as soon as possible, becoming a naturalized U.S. citizen in 2013. He changed his name (by Americanizing his first name) during the naturalization process. He began working for his current employer, a federal contractor in the defense industry, in about September 2015, and he has since been deployed to Kuwait in support of the U.S. armed forces.<sup>9</sup>

Including this case, Applicant has been interviewed or questioned by representatives of the U.S. Government multiple times.<sup>10</sup> He was initially interviewed in Iraq in 2003 for his job as a local-hire linguist. He was also interviewed in Iraq in 2004 for his job as a local-hire linguist. He was interviewed in Egypt in 2008 in conjunction

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<sup>8</sup> Tr. 58-59.

<sup>9</sup> Tr. 23-24.

<sup>10</sup> Exhibit 2 at 6 and Exhibit 3.

with his refugee application. He was interviewed in the United States in 2013 by U.S. immigration officials as part of his petition for naturalization. He was interviewed in 2015 during a counterintelligence-focused security screening interview. And he was interviewed as part of the background investigation for this case in 2016.

Applicant has in the past sent money to people living in Iraq (SOR ¶¶ 1.c and 1.d). He sent money to his family in Iraq, as his family had remained in Iraq until they relocated to the United States. He sent a total of about \$2,000 to \$2,500 via Western Union to his family over 10 to 15 transactions during this time. He also sent a total of about \$5,000 via Western Union—although it was not his money—to his friend’s wife’s daughter in Iraq. He did so at the request of his friend who was then working in Jordan, because his friend’s wife did not speak English, and she did not understand how to send the money.

Applicant’s work as a linguist in support of the U.S. armed forces resulted in working with two Army combat divisions and a special-forces group. He stated that he faced the same risks as the soldiers he supported, that he came under hostile fire multiple times, and that they were “facing death every second actually.”<sup>11</sup> For his efforts, he received multiple certificates of appreciation and several highly favorable letters of recommendation from people he served with in Iraq.<sup>12</sup>

Administrative or official notice is taken of certain facts about Iraq as described in Department Counsel’s written request and Applicant’s written request.<sup>13</sup> The situation in Iraq is well known within the Defense Department and it is unnecessary to discuss those facts at great length here. In general, the overall security situation in Iraq is fluid and at times quite unstable if not deadly after many years of war. The risk of terrorism remains high (for example, a January 2018 double-suicide bombing in central Baghdad killed dozens of people).

### **Law and Policies**

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.<sup>14</sup>

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<sup>11</sup> Tr. 62-63.

<sup>12</sup> Exhibits E and F.

<sup>13</sup> Exhibits 4 and G.

<sup>14</sup> The 2017 AG are available at <http://ogc.osd.mil/doha>.

It is well-established law that no one has a right to a security clearance.<sup>15</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>16</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>17</sup> The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>18</sup>

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>19</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>20</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>21</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>22</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>23</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>24</sup>

## Discussion

The gravamen of the SOR under Guideline B is whether Applicant’s ties to Iraq should disqualify him from access to classified information. Under Guideline B for

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<sup>15</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>16</sup> 484 U.S. at 531.

<sup>17</sup> 484 U.S. at 531.

<sup>18</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> Directive, ¶ 3.2.

<sup>21</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> Directive, Enclosure 3, ¶ E3.1.15.

foreign influence,<sup>25</sup> the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is:

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.<sup>26</sup>

Given the evidence of Applicant's ties to Iraq, I have considered the following disqualifying and mitigating conditions under Guideline B as most pertinent:

AG ¶ 7(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;

AG ¶ 7(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;

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions of 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

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>25</sup> AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>26</sup> AG ¶ 6.

Based on U.S. concerns about the risk of terrorism, Iraq meets the heightened-risk standard in AG ¶ 7(a). This conclusion is based on the facts set forth in Department Counsel's written request for administrative notice.<sup>27</sup>

Applicant's ties to Iraq, although now minimal, are sufficient to raise a concern under Guideline B. With that said, Applicant has the signs of being a mature and responsible person. He has been employed since shortly after his arrival here about ten years ago. Although separated from his wife since 2013, he is endeavouring to support himself and his wife and children by working as a linguist overseas. Before immigrating to the United States, he spent about three years (2003-2006) in Iraq working as a local-hire linguist in support of the U.S. armed forces in a dangerous and high-risk environment, which is a circumstance that weighs heavily in his favor. Although he has both family and cultural ties to Iraq, he has strong family ties to the United States, as most of his large immediate family live here. His ties or contacts with his father-in-law and his sisters-in-law have been virtually nonexistent since he fled Iraq in 2006, although it is presumed that his wife has some contact with her father and sisters in Iraq. There is nothing unusual about Applicant's ties or connections to Iraq.

This process is not a zero-risk program, because nearly every applicant presents some risk or concern. Many security clearance cases come down to balancing that risk or concern. Here, on balance, I am satisfied that the strength of his ties to the United States greatly outweigh and overcome his ties to Iraq. I would describe Applicant's ties to Iraq at this point in his life as relatively minimal, while his ties to the United States are far stronger. Moreover, he has been thoroughly vetted in multiple interviews, and he has proven both his reliability and commitment to the United States by his willingness to go in harm's way in support of the U.S. armed forces. This is clearly not a case of "divided allegiance" with an applicant who has one foot in each country. To the contrary, Applicant appears to have both feet planted here in the United States and his ties to the United States will continue to grow stronger over time. Viewing the record evidence as a whole, Applicant can be expected to resolve any potential concern or potential conflict of interest in favor of the U.S. interest.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighted the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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<sup>27</sup> Exhibit 4.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a – 1.d:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard  
Administrative Judge