



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



In the matter of:)
)
) ISCR Case No. 16-02029
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2018

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated foreign security concerns pertaining to Guidelines C (foreign preference) and B (foreign influence). Eligibility for access to classified information is granted.

Statement of the Case

On November 28, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C and B. On December 16, 2016, Applicant responded to the SOR, and elected to have the case decided on the written record in lieu of a hearing.

On October 4, 2017, 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. Applicant received the FORM on October 18, 2017. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional information within the 30-day period. On January 16, 2018, the case was assigned to me. The Government exhibits, marked as Items 1 through 9, are admitted in evidence.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective “for all covered individuals” on or after June 8, 2017. Accordingly, I have evaluated Applicant’s security clearance eligibility under the new AGs.¹

Procedural Ruling

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant’s connections to Iraq and Syria with six and eight attachments, respectively. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to me taking administrative notice of the proffered documents. Department Counsel’s request for administrative notice is granted. The “Iraq” and “Syria” sections are quoted from Department Counsel’s administrative notice request (bullet symbols and internal footnotes are omitted).

Findings of Fact²

Applicant admitted all of the SOR allegations, with explanations, except SOR ¶ 2.e, which he denied, with an explanation.

Background Information

Applicant is a 67-year-old linguist employed by a defense contractor since January 2015. (Item 3) He seeks a security clearance as a requirement of his employment.

Applicant was born in Iraq in 1950. He immigrated to the United States in April 1976, as an Iraqi refugee sponsored by the World Council of Churches. He left Iraq because he was persecuted as an Assyrian and Christian. Approximately, two years

¹ The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

² The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family’s privacy. The cited sources contain more specific information.

after arriving in the United States, Applicant obtained his permanent residency (green card). In 1982, he became a naturalized U.S. citizen. Applicant was issued his most recent U.S. passport in 2008, which expires in 2018. (Items 3, 4)

Applicant married his first wife, a native-born Iraqi, in 1975, and divorced her in 2010. His former spouse is a naturalized U.S. citizen. Applicant married his current wife, a native-born Syrian, in 2010. His current wife became a naturalized U.S. citizen in 2007. (Items 3, 5) Of note, at the time this FORM was prepared, Applicant's wife was working as a linguist for a defense contractor in Iraq. (Item 4) A breakdown of Applicant's family members, in-laws, former in-laws, and extended family is discussed further under Foreign Influence, below.

The FORM does not contain any information regarding Applicant's education in Iraq before he immigrated to the United States. After arriving in the United States, he was awarded an electronics technician certificate in 1981 from a university and an electronics certificate in 1984 from a community college. Applicant received his real estate license in 1991 that he renews every two years. (Item 5)

Foreign Preference

Alleged under this concern are two occasions when Applicant used his Iraqi citizenship to vote in Parliamentary elections in 2005 and 2008.³ He voted in a remote polling center located in the United States using his U.S. passport as identification that states he was born in Iraq. (Items 2, 4) At the time Applicant voted in 2005 and 2008, he did not hold a security clearance nor was he aware that voting in an Iraqi election would have jeopardized his future security clearance eligibility.

Foreign Influence

Alleged under this concern is Applicant's membership in the Assyrian Democratic Movement, an Iraqi-based organization, and that Applicant provided financial support to his local chapter of the Assyrian Aid Society, an organization that provides humanitarian aid to the Assyrian people in Iraq. Applicant does not dispute either of these allegations adding that the Assyrian Democratic Movement is a peaceful Christian group supportive of the United States. The money he donated to the Assyrian Aid Society "help[s] needy Christians of Iraq, with food and basic needs of life." (Item 2) The Government's evidence does not rebut or challenge these assertions. (Items 8, 9)

Further alleged is that Applicant provided approximately \$1,000 in financial support to his sister-in-law, a resident citizen of Syria. Applicant does not dispute this explaining that he did so for humanitarian reasons to help her with the basic needs of food and shelter. His sister-in-law is a homemaker and is not affiliated with the Syrian government. Applicant estimates that his contact with his sister-in-law is limited to approximately three times a year by telephone. (Items 2, 4, 5) Applicant also is alleged

³ At the time this SOR was issued, the former September 1, 2006 AGs were in effect that listed AG ¶ 10(7) "voting in a foreign election" as a specific disqualifying condition. Under the new AGs effective June 8, 2017, no such specific provision exists.

to have had contact with members of the Iraqi Parliament. He clarified that stating that he did have contact with a member of the Iraqi Parliament during that member's visit to the United States, however, his contact with this member is infrequent and primarily limited to times during this member's infrequent visits to the United States, the last visit being in 2015. (Items 2, 5)

Lastly, it was alleged that Applicant's mother-in-law was a citizen and resident of Syria. Applicant also clarified his mother-in-law's status stating that she holds permanent residence alien status (green card) and lives in the United States near his residence. She was a career homemaker and has no affiliation with the Syrian government. In about the 2015 timeframe, she visited Syria for about a year to care for a sick relative, and has since returned to the United States. As of December 2016, she had a pending application to become a United States citizen. (Items 2, 4, 5)

From October 2006 to December 2006, Applicant was employed by a defense contractor as a linguist in Iraq and held a clearance. He was required to leave that position prematurely to settle his divorce with his first wife. (Item 4) Applicant's mother, two brothers, and one sister are naturalized U.S. citizens and reside near him. He has a brother and a sister who are resident citizens of Australia. His late father was also a naturalized U.S. citizen. (Item 4) Applicant's wife, stepson, and two stepdaughters are naturalized U.S. citizens and reside with or near him. He has daily contact with his U.S.-based relatives, infrequent contact with his Australian-based relatives, and infrequent contact with his Syrian-based sister-in-law. (Items 3, 4, 5)

All of Applicant's real and personal property and assets are located in the United States. He has no assets outside of the United States. He is a law-abiding citizen and has never been arrested. (Items 4, 5) Applicant left Iraq because of religious persecution. He is very grateful for the opportunities available to him in the United States. (Item 2)

Iraq

The U.S. State Department warns that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence and to avoid all but essential travel to Iraq. The U.S. Government considers the potential threat to U.S. Government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines.

The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is extremely limited given the security environment. The Islamic State of Iraq and the Levant (ISIL) controls a significant portion of Iraq's territory. Within areas under ISIL control, the Iraqi government has little or no ability to exercise control and ensure public safety.

Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by improvised explosive devices (IED) occur frequently in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators (EFPs), magnetic IEDs placed on vehicles,

human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and shootings using various direct fire weapons. Such attacks often take place in public venues such as cafes and markets.

Iraq witnessed a continued surge of terrorist activity in 2015, primarily as a result of the actions of ISIL. In 2015, the ISIL remained the greatest terrorist threat globally, maintaining a formidable force in Iraq and Syria, including a large number of foreign terrorist fighters. ISIL's capacity and territorial control in Iraq reached a high point in spring 2015, but began to erode over the second half of 2015. Although the government of Iraq made significant progress in its campaign to retake occupied territory from ISIL, there remained a security vacuum in parts of Iraq.

In its annual human rights report, the U.S. Department of State reported that ISIL committed the overwhelming number of serious human rights abuses, including attacks against civilians, especially Shia but also Sunnis who opposed ISIL, members of other religious and ethnic minorities, women, and children. ISIL members committed acts of violence on a mass scale, including killing by suicide bombings, improvised explosive devices, execution-style shootings, public beheadings, and other forms of executions. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the Iraqi government's authority and worsened effective human rights protections.

Syria

The Syrian Arab Republic (Syria) is ruled by an authoritarian regime dominated by the Socialist Ba'ath Party, which is currently engaged in a full-scale civil war with the armed Syrian opposition. The Syrian regime has used deadly force to quell anti-government protests and is engaged in a full-scale civil war with armed groups. The Syrian government is no longer in control of vast swathes of the country, particularly in northern, southern, and eastern Syria and Damascus suburbs. The Islamic State in Iraq and Syria (ISIS) controls large amounts of territory in the east of the country where it has committed atrocities against civilians, including the murder of U.S. citizens. The Syrian regime's military operations have involved the use of ballistic missiles, aerial attacks, heavy artillery, and chemical weapons targeting civilian centers."

Attacks from the regime or other groups could happen with little or no warning and no part of Syria should be considered immune from violence. The potential for violence exists throughout the country for unpredictable and hostile acts, including kidnappings, sniper assaults, terrorist attacks, large- and small-scale bombings, as well as arbitrary arrest, detention, and torture. There is an ongoing and increased risk of kidnapping of U.S. citizens and Westerners throughout the country. U.S. citizens remain a specific target.

The security situation throughout the country is very likely to remain volatile and unpredictable for the foreseeable future, with some areas experiencing substantially increased levels of violence. The conflict has caused over 400,000 deaths with many

thousands more wounded, 5.1 million refugees, and 6.3 million displaced persons inside Syria, while 4.53 million remain in hard-to-reach and besieged areas.

The U.S. Department of State continues to warn citizens against travel to Syria and strongly recommends that U.S. citizens remaining in Syria depart immediately.” Syria is designated by the U.S. Department of State as a State Sponsor of Terrorism, and has been since 1979. The Assad regime continues to provide political and military support to a variety of terrorist groups affecting the stability of the region. It has provided political and weapons support to Hizballah and Iran. Iran, in turn, has supported the Syrian regime against its opposition.

The Assad regime has played a significant role in the growth of terrorist organizations such as al Qaida and ISIS. Because of its permissive attitude towards these organizations and others like them, it has acted as a terrorist hub for foreign fighters entering Iraq to battle U.S.-led coalition forces. Over the years, Syria’s encouragement of violent extremists to transit through its borders has resulted in it becoming an environment where terrorist groups such as ISIS have planned and launched deadly terrorist attacks against external countries such as France, Saudi Arabia, Lebanon, and the United States.

The U.S. Department of State’s 2016 Human Rights Report stated that the worst human rights violations were caused by the Assad regime’s fundamental lack of regard for the well-being of most of its populace. Human Rights violations were widespread and consisted of the government’s failure to protect its people from deadly violence and other abuses by terrorist groups such as ISIS and Jabhat al-Nusra. The Assad government has perpetrated indiscriminate and unlawful violence against its citizens, including bombings of schools, hospitals, and residential areas . . . often for the purpose of furthering a military goal. The Assad regime also violated its citizens’ basic civil liberties, such as the right to a fair trial, and freedoms of movement, expression, and association.

The Syrian government conducts surveillance of foreign visitors. U.S. citizens visiting Syria should expect the potential for monitoring of their activities, and the possibility of incarceration for seemingly innocuous actions such as taking pictures, using a GPS, or discussing politics or religion.

In December 2015, President Obama signed into law the “Visa Waiver Program and Terrorist Travel Protection Act of 2015. As implemented, the Act restricted citizens of (and foreign visitors to) Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen from the benefits of an existing Visa Waiver Program in what it called an effort to address “the growing threat from foreign terrorist fighters.” The seven countries were excluded from the Visa Waiver Program because they were determined to have repeatedly provided support for acts of international terrorism, and /or because the Secretary of Homeland Security deemed that visitation to or habitation in the specified countries by a foreign national increased the likelihood that the foreign national will represent a credible threat to the national security of the United States.

On January 27, 2017, President Trump signed Executive Order No. 13769. “Protecting the Nation from Foreign Terrorist Entry in to the United States,” 82 Fed. Reg. 8977 (EO-1). In its review of EO-1, the U.S. Supreme Court observed: “Among other directives, the order suspended entry of foreign nationals from seven countries identified as presenting heightened terrorism risks - - Syria, Iran, Iraq, Libya, Somalia, Sudan, and Yemen - - for 90 days EO-1 was immediately challenged in court Rather than continue to litigate EO-1, the Government announced that it would revoke the order and issue a new one. . . .”

On March 6, 2017, President Trump signed Executive Order No. 13780, 82 Fed. Reg. 13209 (EO-2), which reduced the affected countries to six, including Syria. Several injunctions on the implementation of EO-2 were ordered by Federal courts around the country and the cases were consolidated for hearing at the U.S. Supreme Court. On June 26, 2017, the Supreme Court stayed the injunctions in part, which allows the restrictions in EO-2 on U.S. entry to be enforced against citizens from Syria, Iran, Libya, Somalia, Sudan, and Yemen unless they “have a credible claim of a *bona fide* relationship with a person or entity in the United States.” (The *Bona Fide* Relationship Exception). According to the text of EO-2, this “pause is necessary to ensure that dangerous individuals do not enter the United States while the Executive is working to establish ‘adequate standards . . . to prevent infiltration by foreign terrorists.’”

On September 24, 2017, President Trump issued a Presidential Proclamation titled “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats” (the Proclamation). Under this action, nationals of eight countries, including Syria, are subject to various travel restrictions. With respect to Syrian nationals, the Government will no longer issue “nonimmigrant visas” after October 18, 2017, under the *Bona Fide* Relationship Exception, but State Department Consular officers may determine if a given visa applicant is exempt from the restrictions of the Proclamation or is eligible for a waiver thereunder.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are

applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Preference

AG ¶ 9 explains the security concern about foreign preference stating:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the

United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 sets out one condition with one subsection that could potentially raise a security concern and may be disqualifying in this case:

(d) participation in foreign activities, including, but not limited to:

(2) otherwise acting to serve the interests of a foreign person, group, organization or government in any way that conflicts with U.S. national security interests.

AG ¶ 11 lists one condition that could mitigate foreign preference security concerns:

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.

Applicant's November 28, 2016 SOR alleged that Applicant voted in 2005 and 2008 Iraqi elections in a remote U.S. location near his U.S. home while a naturalized U.S. citizen. Applicant's explanation for voting at that time is reasonable. When he voted, he did not have a security clearance nor is there any record evidence that he contemplated applying for a security clearance. He also wanted to support a candidate sympathetic to the United States and supportive of his belief system. Voting in a foreign election raised a disqualifying condition under the previous foreign preference AGs. However, under the 2017 AGs, voting in a foreign election no longer raised a specific foreign preference concern. In the unlikely event a concern exists under the new AGs, relief is available under AG ¶ 11 and under the whole-person analysis, discussed below.

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

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.

AG ¶ 7 has three conditions that could raise a security concern and may be disqualifying 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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant does not have frequent contacts⁴ with an Iraqi member of Parliament, but does have contact with his Syrian sister-in-law by telephone about three times a year. His contact with an Iraqi member of Parliament is situational and is primarily limited to those times during this member's infrequent visits to the United States. His frequent contact with immediate family members is centered on those U.S.-based relatives. AG ¶ 7(a) is not established with regard to the Iraqi member of Parliament, but is established with regard to his Syrian sister-in-law. AG ¶¶ 7(b) and 7(e) apply. SOR ¶¶ 2.a. and 2.b are not established as security concerns precluding the necessity of further discussion.

There are widely documented safety issues for residents of Iraq and Syria because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the DOD in Iraq briefly in 2006 and he is willing to do so in the future. During the timeframe that Applicant's SOR was issued, his Syrian-born and naturalized U.S. citizen wife, was working as a linguist for a defense contractor in Iraq. Numerous linguists, supporting U.S. forces, have family living in Iraq and Syria. Thousands of the U.S. and coalition armed forces and civilian contractors serving in Iraq and Syria are targets of terrorists along with Iraqi and Syrian civilians who support the Iraq Government and cooperate with coalition forces.

⁴ The Appeal Board has concluded that contact every two months or more constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

The mere possession of close family ties with one or more family members living in Iraq or Syria is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant lives with and is close to his spouse. His spouse's mother is Syrian-born, but now lives in the United States with a pending application to become a U.S. citizen. Applicant's sister-in-law, however, lives in Syria with whom he has telephonic contact about three times a year and has provided her with modest financial support in the past. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Indirect influence from a spouse's relatives living in Syria could result in a security concern. See ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding "presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his spouse) having foreign family contacts, establish the 'heightened risk'" in AG ¶¶ 7(b) and 7(e)).

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iraq and Syria with the United States, and the situation in Iraq and Syria place a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Syria do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Syria.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Syria seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and has an enormous problem with terrorism. Applicant's relationships with relatives who may be living in Syria create a potential conflict of interest because terrorists could place pressure on his family living in Iraq or Syria in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's contacts with a person and group in Iraq and family in Syria and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(b) and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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;
- (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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a), 8(b), and 8(c) apply. Applicant does not have frequent contact with an Iraqi member of Parliament and his connection with and support for the Assyrian Democratic Movement poses limited security significance. However, that is not the case with regard to his Syrian sister-in-law. She is a resident citizen of Syria. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." In 1976, Applicant immigrated to the United States as a religious refugee, and in 1982, he became a U.S. citizen. His spouse lives in the United States, and she became a naturalized U.S. citizen in 2007. Applicant's mother, two brothers, one sister, stepson, and two stepdaughters are naturalized U.S. citizens and residents and live near him.

Applicant's support to the DOD and the support of his wife in Iraq as a linguist and cultural advisor, including the dangers that service entailed, weigh heavily towards mitigating security concerns. Applicant has served as a linguist in Iraq, and when this SOR was issued, his wife was serving as a linguist in Iraq, providing critical assistance to U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States' goals in Iraq. He has shown his patriotism, loyalty, and fidelity to the United States during his service in Iraq and desire to serve again in the future. Additionally, his wife has shown that same patriotism, loyalty, and fidelity to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens of Syria and could possibly be located in Syria. Applicant's sister-in-law lives in Syria. Like every other resident of Syria, any of his relatives who may be living in Syria are at risk from terrorists. It is important to be mindful of the United States' huge investment of manpower and money in Iraq, and Applicant has supported U.S. goals and objectives in

Iraq. Applicant and his relatives possibly living in Syria are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk if his relatives are still living in Syria.

In sum, Applicant's possible future connections to his relatives living in Syria are less significant than his connections to the United States. Applicant and his wife's employment in support of the U.S. Government, numerous family members living in the United States, performance of linguist duties in a combat zone, and lengthy U.S. citizenship are important factors weighing towards mitigation of security concerns. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines C and B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant and presumably his spouse have contact with her sister in Syria. Contact with an Iraqi member of Parliament is deemed infrequent and not a factor in this analysis. Any relationships with citizens and residents of Syria raise important foreign influence security concerns, and they must be balanced against his connections to the United States.

In 1976, Applicant immigrated to the United States to escape religious persecution in Iraq, and in 1982, he became a U.S. citizen. His spouse lives in the United States, and she became a U.S. citizen in 2007. Applicant briefly served as a DOD contractor linguist in 2006 and when this SOR was issued in 2016, his wife was serving as a DOD contractor linguist in Iraq. The majority of his immediate family to include his spouse, brothers, sister, and three stepchildren are all U.S. citizens and live

near him. When he became a U.S. citizen, he took an oath of allegiance to the United States. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or violated any of his employer's rules. All of Applicant's assets are located in the United States as opposed to having no assets outside of the United States.

All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service as a linguist weighs heavily towards approval of his security clearance. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting "Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.").

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign preference and foreign influence security concerns are mitigated.

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
Subparagraphs 1.a through 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.e:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert Tuider
Administrative Judge