



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



In the matter of:)
)
) ISCR Case No. 16-02061
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq., The Edmunds Law Firm

07/11/2018

Decision

WHITE, David M., Administrative Judge:

No valid Foreign Preference security concerns were raised, but Applicant failed to mitigate the Foreign Influence concerns created by his contacts and connections with family members in Iraq. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

History of Case

On July 8, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 29, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). 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 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 adjudicative

guidelines (AG) were implemented for use in national security eligibility decisions issued after that date.¹

Applicant answered the SOR in writing on January 15, 2017 (Answer). He admitted the SOR allegations, except he denied that his wife still resided in Iraq, 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 11, 2017, setting the hearing for July 28, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through E into evidence. All exhibits were admitted without objection. I took administrative notice of the facts concerning Iraq that are set forth on pages 3 and 4 of the Government's Request for Administrative Notice, which is marked Hearing Exhibit (HE) II and included in the record.² DOHA received the hearing transcript (Tr.) on August 8, 2017.

Findings of Fact

Applicant is 33 years old. In September 2014 he married an Iraqi citizen, who moved in June 2016 to join him and become a U.S. resident.³ They have one child who was born in the United States in February 2017. Applicant was born and lived in Iraq until age 22. He graduated from high school in Iraq and has taken some community college classes in the United States. He came to the United States in 2008 using a Special Immigrant Visa,⁴ which he was granted because he had worked as an interpreter for U.S. forces in Iraq from January 2005 to May 2007. He became a naturalized U.S. citizen in March 2013. He has been employed as a linguist by a defense contractor since March 2015, and is applying for a security clearance in connection with that position. (GE 1; GE 2; Tr. 29, 35-38, 55, 73.)

Applicant's parents and his wife's parents are resident citizens of Iraq. He and his wife are in close and regular contact with their parents through telephonic and other electronic means. His father works as a driver for an Iraq Oil Ministry company and his father-in-law is a baker. His mother and mother-in-law are homemakers. Applicant stayed in his parents' home during his family visits to Iraq for several months at a time in 2009, 2010, 2014, 2015, and 2016. He has provided significant financial support to many of his family members in Iraq since 2010. (Answer; GE 1; GE 2; Tr. 45-49, 58-62, 66-78, 81.)

¹ I considered the previous AG, effective September 1, 2006, but this decision applies and cites the new AG, effective June 8, 2017. My final decision would be the same if the case was considered under the previous AG, but my Guideline C analysis would be different under the old version. Applicant and his counsel acknowledged their understanding that the new AG would govern this decision. (Tr. 7-8.)

² HE I is the Government Exhibit Index. HE III is the Applicant Exhibit index.

³ In his March 2015 e-QIP, Applicant described her document status, "new married still in my country in Iraq." (GE 1 at 28.)

⁴ Applicant paid smugglers to transport him from Iraq to a European country in 2007, after he was not selected to receive a U.S. entry visa through the lottery process. Members of the military unit for whom he had worked in Iraq contacted him in that European country to help him obtain his Special Immigrant Visa in 2008. (Tr. 101-104.)

Applicant has three brothers and three sisters, all of whom are citizens of Iraq. Two of his brothers, ages 36 and 25, and all three of his sisters, ages 38, 23, and 21, live in Iraq with or near their parents. His third brother, age 31, lives with Applicant in the United States as a permanent resident after serving as an interpreter and obtaining a Special Immigrant Visa in late 2012.⁵ Applicant's older sister formerly worked as a farmer, but is now a homemaker. His two younger sisters are students. His brothers are employed as taxi drivers or work for private oil companies, as did Applicant before obtaining his current position. Applicant's parents, siblings, and in-laws know that he works as an interpreter in Iraq for a U.S. contractor, but he does not share details concerning that employment. (Answer; GE 1; GE 2; GE 3; Tr. 49-55, 80-90.)

Applicant worked as a local-hire linguist supporting U.S. forces in Iraq from January 2005 to May 2007. After obtaining his Special Immigrant Visa to become a United States resident, he worked from 2009 to 2012 at a major stateside military installation as a contract role player in support of pre-deployment training for U.S. Army units. He has served in his current position as a linguist supporting U.S. forces in Iraq since August 2016, with several short visits home. He has endured a personal assault and stabbing, and served in sustained combat operations, in Iraq in connection with his service as a linguist and interpreter for U.S. military units. Senior military officers with whom he served wrote letters commending his courage, integrity, and trustworthiness in promoting their successful mission accomplishment. Applicant also received numerous citations commending his dedication and professional performance. (GE 1; GE 2; AE C; AE D; AE E; Tr. 31-35, 49-58, 80-85, 104-105.)

Applicant had several Iraqi passports that he used in connection with being smuggled into the European country in 2007 and immigrating to the United States in 2008. During visits to Iraq after becoming a U.S. citizen in 2013, he used his Iraqi passport to enter and leave Iraq, in order to avoid having to obtain and pay for a visa in connection with use of his U.S. passport. That Iraqi passport expired in 2015, and Applicant used his U.S. passport to enter and leave the United States after he became a U.S. citizen. (39, 41-45, 74, 106-109.)

I have taken administrative notice of facts contained in U.S. Government publications concerning the state of Iraq, as outlined on pages 3 and 4 of HE II, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups and anti-U.S. sectarian militias are active throughout Iraq. The Islamic State of Iraq and the Levant (ISIL or Islamic State) controls a portion 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, and attacks against civilians have been noted. (HE II.)

⁵ As of the hearing date, this brother had not been a U.S. resident long enough to apply for citizenship.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility for access to classified information.

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. According to AG ¶¶ 2(b) and 2(c), 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must 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 who applies 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 eligibility for access to classified information or assignment in sensitive duties. 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, "Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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 sets out conditions that could raise a security concern and may be disqualifying. Two of them are potentially applicable:

(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;⁶ 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.

Applicant has ongoing, close and commendable familial connections with his parents, siblings, and in-laws, who are residents and citizens of Iraq. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists, insurgents, or anti-U.S. militia personnel in Iraq may threaten Applicant or his family, as they seek intelligence or engage in behaviors that are hostile to U.S. interests. Applicant has been personally attacked and stabbed as a result of his prior service with U.S. forces in Iraq, and his family members are aware that he has

⁶ 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).

resumed such activities there. Applicant's relationship with his relatives also creates a potential conflict of interest between his 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, shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

- (a) the nature of the relationship 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 did not establish that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States as a consequence of his close and commendable relationships with his family members in Iraq. Those connections create continuing and significant potential for conflict of interest and risk of coercion, exploitation, manipulation, or pressure. Applicant has demonstrated courage and compliance with U.S. security procedures in the face of significant personal risk arising from his collaboration with U.S. forces in Iraq. Under Appeal Board precedent, this weighs favorably in assessing his likelihood of resolving future conflicts in favor of U.S. interests. However, his other connections to the United States are minimal and recent, as evidenced by his reference to, "my country in Iraq," in his 2015 e-QIP. Accordingly, Applicant failed to establish mitigation with respect to those relationships under AG ¶¶ 8(a), (b), or (c).

Guideline C: Foreign Preference

The Foreign Preference guideline in effect at the time the SOR was issued included potentially disqualifying conditions relating to the exercise of rights or privileges of foreign citizenship, and possession or use of a foreign passport. The new Guideline C criteria, which came into effect on June 8, 2017, and control this national security

eligibility determination, explicitly state that the exercise of any right or privilege of foreign citizenship (including holding a foreign passport or identity card) is not disqualifying without an objective showing that it is in conflict with U.S. national interests or the individual attempts to conceal such facts. Applicant has not renewed the expired Iraqi passport with which he originally entered the United States, and only used it for entering and exiting Iraq after he obtained his U.S. passport. No Guideline C foreign preference security concerns are raised or supported by substantial evidence in this case.

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 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 results of his commendable family situation. Applicant is a mature person, who gained U.S. residence as a Special Immigrant after providing linguist services to U.S. forces in Iraq. He has been a naturalized citizen since 2013, and began working as an interpreter for U.S. forces in Iraq in 2016. His spouse is a permanent U.S. resident, and their infant child was born in the United States. There is no evidence or allegation that he has ever taken any action that could cause potential harm to the United States. However, his ongoing close relationships with his numerous family members, who are resident citizens of Iraq, create significant and ongoing potential for pressure, coercion, exploitation or duress.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant did not meet his burden to mitigate the foreign influence security concerns raised by the facts of this

case. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.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 access to classified information. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge