



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



In the matter of: )  
)  
) ISCR Case No. 16-02898  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

12/18/2017

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the foreign influence security concerns involving his family in Iraq. The Government did not establish the personal conduct security concern, involving Applicant's failure to disclose his one-time provision of financial support to his family in Iraq on his 2015 security clearance application. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 22, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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 (AG).<sup>1</sup>

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on October 7, 2016, and requested a hearing before an administrative judge. The case was assigned to another judge, but was transferred to me on July 31, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 7, 2017, scheduling the hearing for September 12, 2017. I convened the hearing as scheduled.

The Government's discovery letters and exhibit list were appended to the record as Hearing Exhibits (HE) 1 and 2. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant's exhibit list was appended to the record as HE 4. Applicant testified and submitted Applicant's Exhibits (AE) A through O, which were admitted in evidence without objection.

Department Counsel requested that I take administrative notice of relevant facts about Iraq. The request and supporting documents were not admitted in evidence but were appended to the record as HE 3. I took administrative notice as requested by Department Counsel. On my own motion, and without objection by either party, I took administrative notice of additional facts contained in HE 6. The facts administratively noticed are set out below in my findings of fact.

At Applicant's request and with no objection from the Government, I left the record open until September 19, 2017, for additional documentation. Applicant timely provided documentation, which I marked as AE P. The Government's memorandum for the record indicating no objection to Applicant's post-hearing submission was appended to the record as HE 5, and AE P was admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on September 20, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c, and denied SOR ¶ 2.a.<sup>2</sup>

Applicant is 43 years old. He was born in Iraq. He obtained his bachelor's degree in Iraq in 2002. From October 2003 to 2007, he worked as a local-hire linguist in support of U.S. military forces in Iraq. From 2008 to 2010, he worked for a federal contractor as a linguist deployed to Iraq. Since January 2015, he has worked for his current federal contractor, deployed to Iraq as a high-level interpreter for senior U.S. military and foreign dignitaries. He was twice wounded in combat while serving U.S. military forces in Iraq; first in 2007, and the second in 2009. He has never held a DOD security clearance.<sup>3</sup>

In September 2007, Applicant immigrated to the United States on a special visa for which he qualified through his employment as a local-hire linguist from 2003 to 2007. He was unemployed from October 2007 to October 2008, and he worked as a self-employed cab driver from 2011 until he obtained his current job in January 2015. He

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<sup>2</sup> Applicant's response to the SOR.

<sup>3</sup> Tr. at 6-7, 14-18, 26-29; GEs 1-2; AEs A, C, E, H, J-M, P.

was naturalized as a U.S. citizen in October 2012. He surrendered his prior Iraqi passport to his security officer in 2015, before it expired. He does not currently have an Iraqi passport and he has no future intentions of obtaining one. He has used his U.S. passport, issued in January 2015, for foreign travel. As of the hearing date, he was unmarried and did not have any children.<sup>4</sup>

Applicant's mother, two brothers, and three sisters are citizens and residents of Iraq. He last saw them in September 2007, prior to his move to the United States. His mother is a 69-year-old housewife. She is widowed. Applicant contacts her telephonically once monthly; he last spoke to her several months before the hearing. She owns her home in Iraq, valued at approximately \$200,000. He does not expect to inherit this property, as it would pass on to his siblings who live in it. His mother is financially supported by his siblings who live with her. In 2010, Applicant gifted his mother with \$28,000 so that she could go to pilgrimage. His brothers also used some of this money to buy their own cars. This was the only time Applicant provided his family in Iraq with financial support.<sup>5</sup>

Applicant's older brother is 46 years old. He is married and has two minor children, and they live with Applicant's mother. From 2006 to 2008, he also worked as a local-hire interpreter in support of U.S. military forces in Iraq, in the same unit as Applicant. As of the hearing, he owned a retail shop since 2009. While he was drafted in the Iraqi military for two years after he turned 18 years old, he has not since had any affiliation with the Iraqi government. His wife does not work outside the home. Applicant speaks with him telephonically once every three weeks to monthly, and last saw him in 2007. He obtained a special visa in 2010 to come to the United States, but he delayed his plans as his wife was pregnant. He intends to move to the United States with his family. When Applicant sent his mother money in 2010, he sent it through this brother. Aside from the money Applicant sent in 2010 for this brother to purchase a car, Applicant has not since sent him any money or non-monetary gifts; they do not have any shared financial interests.<sup>6</sup>

Applicant's younger brother is 42 years old. He is married and has four minor children, and they also live with Applicant's mother. He works in the field of medicine for a private company. While he was also drafted in the Iraqi military for two years after he turned 18 years old, he has not since had any affiliation with the Iraqi government. Applicant speaks with him telephonically once every three weeks. Aside from the money Applicant sent in 2010 for this brother to also purchase a car, Applicant has not since sent him any money or non-monetary gifts; they do not have any shared financial interests.<sup>7</sup>

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<sup>4</sup> Tr. at 6-7, 14-18, 27-30, 52-54, 67; GEs 1-2; AEs A, F, I, N, P.

<sup>5</sup> Tr. at 32-35, 50, 57-58, 65, 70, 74-78; GEs 1-2; AEs D, P.

<sup>6</sup> Tr. at 14-18, 35-39, 44-45, 50, 65, 67-73; GEs 1-2; AEs O, P.

<sup>7</sup> Tr. at 39-42, 44-45, 50, 65, 67-73; GEs 1-2; AE P.

Applicant's sister is 30 years old. She is married to a farmer. Neither of them are currently affiliated with the Iraqi government. Applicant was unaware whether his sister's husband ever served in the Iraqi military. He speaks to his sister telephonically once every three months. He has never provided her or her husband with financial support or non-monetary gifts. As of the hearing, she was attempting to obtain the necessary paperwork so that she could come to the United States with her family.<sup>8</sup>

Applicant's second sister is 25 years old. She is married to a pharmacist. She does not work outside the home. Neither of them are currently affiliated with the Iraqi government. Applicant was unaware whether this sister's husband ever served in the Iraqi military. He speaks to her telephonically once every three to five months. He has never provided her or her husband with financial support or non-monetary gifts.<sup>9</sup>

Applicant's third sister is 19 years old. As of the hearing, she was not married and also lived with Applicant's mother. She does not currently and never had any affiliations with the Iraqi government. Applicant speaks to her telephonically once monthly. He has never provided her with financial support or non-monetary gifts.<sup>10</sup>

Applicant has not discussed the specifics of his work with his family, but they have supported his decision to work as an interpreter for the U.S. military. When he worked as a local-hire linguist in support of U.S. military forces from 2003 to 2007, he lived on base. During this period, he saw his family once every four to five months, when he was granted leave from the base to visit them; he otherwise communicated with them by telephone. From 2008 to 2010, when he was deployed to Iraq as a linguist, he was not allowed to leave base as a U.S. government contractor. During this period, he never saw his family in Iraq, and he communicated with them solely by telephone. Since March 2015, he has also not been allowed to leave base to visit his family in Iraq, and he communicates with them solely by telephone. He testified that he is loyal to the United States. He does not maintain any other Iraqi contacts. He has not sponsored anyone to the United States. He does not own any property or have any financial interests in Iraq. He rents in the United States. His assets are in the United States, to include his checking account in which he has \$60,000, and his car.<sup>11</sup>

Applicant credibly testified that when he completed his security clearance application in January 2015, he did not understand the question in which he had to disclose his provision of financial support to his family in Iraq, as previously discussed. He stated that he had no reason to hide it, and he did not view his family in Iraq as "foreign." He also stated that it was the first time he completed a security application on his own. He did so electronically, in one day, and he did not review his responses before he submitted the application because he believed he would have been kicked

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<sup>8</sup> Tr. at 14-18; 42-46, 50, 65, 70, 73-74, 76-77; GEs 1-2; AE P.

<sup>9</sup> Tr. at 46-48, 50, 65, 70, 73-74; GEs 1-2; AE P.

<sup>10</sup> Tr. at 48-50, 65; GEs 1-2; AE P.

<sup>11</sup> Tr. at 14-18, 50-54, 61-66, 76; GEs 1-2; AEs B, G, P.

out of the system. He fully disclosed this information when he was interviewed by an investigator in October 2015. The investigator noted that Applicant was “[f]orthcoming with this information when asked . . . .” When he updated his security clearance application in August 2017, he disclosed this information.<sup>12</sup>

Applicant’s references described him as loyal, trustworthy, brave, reliable, and dedicated. One reference stated in 2006 that Applicant “[w]as chosen on multiple occasions to translate for high-level meetings because he could be trusted to translate accurately and safeguard the sensitive information. He is authorized to carry a weapon for his personal protection.” He earned a certificate of appreciation in 2005, a certificate of commendation in 2006, the Secretary of Defense Medal for the Defense of Freedom in 2009, and a certificate of appreciation in 2017.<sup>13</sup>

## **Iraq**

Iraq is a constitutional parliamentary republic. The 2014 parliamentary elections generally met international standards for free and fair elections. Iraq’s security forces include the regular armed forces and domestic law enforcement agencies; the Popular Mobilization Forces (PMF), a state-sponsored military organization composed of nearly 60 predominantly Shia components; and the Peshmerga, the Iraqi Kurdistan Regional Government’s principal military force. Civilian authorities are not always able to maintain effective control of all security forces.

The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. The December 2011 departure of U.S. troops from Iraq marked a milestone in our relationship as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now a key partner for the U.S. in the region as well as a voice of moderation and democracy in the Middle East. Iraq has functioning government institutions including an active legislature, is playing an increasingly constructive role in the region, and has a bright economic future as oil revenues surpass pre-Saddam production levels with continued rapid growth to come. The U.S. maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement. None of the administrative notice documents indicate that the government of Iraq targets the United States for economic or military intelligence, although it is likely that various terrorist and insurgent groups seek military intelligence regarding U.S. military units operating in Iraq.

The U.S.-led Defeat-ISIS Coalition focused on training, equipping, advising, and assisting the ISF, including Kurdish Peshmerga, in coordination with the Government of Iraq. Twenty coalition states joined the United States in deploying military personnel to assist the Iraqi government in training, along with “advise and assist” missions. Coalition partners trained more than 38,500 ISF, while coalition members conducted 4,300 air

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<sup>12</sup> Tr. at 54-60; GEs 1-2; AE P.

<sup>13</sup> AEs A, C, E, J.

strikes in Iraq, including in support of Mosul's liberation. Coalition states contributed more than \$1 billion to UN-managed stabilization projects and humanitarian support in 2016, including at the Iraq Donor Conference in July, bringing total humanitarian assistance to more than 4.5 billion since the current crisis began in 2014. Iraqi officials also participated in Counter-ISIS Ministerial and Lines of Effort working group meetings throughout the year.

The U.S. State Department warns U.S. citizens to avoid all travel to Iraq, and that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including the Islamic State of Iraq and Syria (ISIS). The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is extremely limited given the security environment. ISIS controls a significant portion of Iraq's territory, and the Iraqi government has little or no ability to exercise control and ensure public safety within areas under ISIS control.

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. It did so in an effort to address the growing threat from foreign terrorist fighters. These seven countries were excluded from the visa waiver program because they were determined to have repeatedly provided support for acts of international terrorism, and because visitation to or habitation in the specified countries by a foreign national increased the likelihood that the foreign national would represent a credible threat to the national security of the United States.

Iraq made impressive progress in 2016 toward defeating ISIS; however, ISIS continued to offer fierce resistance in Mosul's city center and a few other strongholds. Severe internal security threats have also endured. Iraqi officials made little progress in managing the country's ethnic, religious, and sectarian fissures, and the passage of legislation formalizing the PMF proved a divisive step that exacerbated the doubts of many Sunnis about the government's willingness to rule for the benefit of all citizens.

In its annual human rights report, the U.S. State Department reported that severe human rights problems were widespread. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections. Iraqi security forces, members of the federal police and the Peshmerga committed human rights violations. There continued to be reports of killing, torturing, kidnapping, and extorting of civilians by the PMF. ISIS committed the overwhelming majority of serious human rights abuses, including attacks against civilians, members of other religious and ethnic minorities, women, and children.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or

induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following 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 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant's mother, two brothers, and three sisters are citizens and residents of Iraq. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. While Iraq made impressive progress in 2016 toward defeating ISIS, ISIS continued to offer fierce resistance in Mosul's city center and a few other strongholds; severe internal security threats have also endured in Iraq. AG ¶¶ 7(a) and 7(b) are established.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:



(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's family are citizens and residents of Iraq. Accordingly, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b).

While Applicant has not seen his family in Iraq since he immigrated to the United States in September 2007, he maintains regular, telephonic contact with them. He also provided \$28,000 in financial support to them in 2010. AG ¶ 8(c) is not established.

From October 2003 to October 2007, 2008 to 2010, and since January 2015, Applicant has worked in support of U.S. military forces in Iraq, during which time he was wounded in combat in 2007 and 2009. His references described him as loyal, trustworthy, brave, reliable, and dedicated. He earned a certificate of appreciation in 2005, a certificate of commendation in 2006, the Secretary of Defense Medal for the Defense of Freedom in 2009, and a certificate of appreciation in 2017. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."<sup>14</sup> I am satisfied that Applicant met his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is established.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

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<sup>14</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

I considered Applicant's demeanor at hearing, and he credibly testified that when he completed his security clearance application in January 2015, he did not understand the question in which he had to disclose his provision of financial support to his family in Iraq, as previously discussed. He had no reason to hide it, and he simply did not view his family in Iraq as "foreign." It was the first time he completed a security application on his own, he did so electronically in one day, and he did not review his responses before he submitted the application because he believed he would have been kicked out of the system. He fully disclosed this information when he was interviewed by an investigator in October 2015, and the investigator noted that Applicant was "[f]orthcoming with this information when asked . . . ." When he updated his security clearance application in August 2017, he disclosed this information. AG ¶ 16(a) is not established.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have incorporated my comments under Guideline B and Guideline E in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guidelines B and E, and evaluating all the evidence in the context of the whole

person, I conclude Applicant has mitigated the foreign influence security concerns, and the Government did not establish the personal conduct security concern. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge