



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



In the matter of:

ISCR Case No. 16-03083

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: Jacob T. Ranish, Esq.

01/25/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns arising from his family connections with Iraq and Jordan. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

**History of Case**

On August 23, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 16, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 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 AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

Applicant answered the SOR in writing on December 15, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 24, 2017. DOHA issued a Notice of Hearing on June 29, 2017, setting the hearing for August 2, 2017. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered his Exhibits (AE) A through I into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 10, 2017.

### **Procedural Ruling**

I took administrative notice of facts concerning Iraq and Jordan. Those facts are set forth in the following: Government's Request for Administrative Notice for Iraq and Jordan, marked as Hearing Exhibit (HE) 1; Applicant's Request for Administrative Notice of Iraq, marked as HE 2; and Applicant's Request for Administrative Notice of Jordan, marked as HE 3. These documents are included in the record. (Tr. 10-13) The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant is 36 years old. He was born in Iraq. He attended high school and college there, earning a bachelor's degree 2003. He never served in the Iraqi army, but from October 2003 to November 2004, he worked as a local-hire linguist and cultural advisor supporting U.S. military operations in Iraq. He was 23 years old when he started working as a linguist. (Tr. 19-20; GE 1; Answer) While working for the U.S. Forces in Iraq, he was personally threatened by the Al Qaeda militia, who left a letter at his home with a death threat. He was subsequently assigned to a new post, but resigned within three months. (GE 2)

After leaving his position with the U.S. Forces in Iraq, Applicant worked as a liaison officer and translator for an Iraqi government agency from December 2004 to November 2006. He then fled to Syria because of the sectarian violence in Iraq. He subsequently moved to Qatar on a visitor's visa. He worked in Qatar from February 2007 to April 2010 as a translator for a private construction company. (GE 2)

In early 2009, Applicant applied for a U.S. visa as a refugee through Direct Access, which was a program available to local Iraqi or Afghani linguists who supported the U.S. Forces. He arrived in the United States on April 28, 2010, as a U.S. permanent resident. On May 19, 2015, he became a naturalized U.S. citizen. (GE 2)

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Since immigrating to the United States, Applicant has worked as an Arabic linguist for a federal agency, private companies, and community outreach organizations. (GE 1, GE 2, GE 3) He worked in Jordan from March 2017 until August 2017 for a defense contractor providing services for a U.S. base. He had not been overseas since 2010 when he left Qatar. (Tr. 41, 43)

Applicant's parents were born in Iraq. His mother is 66 years old and his father is 73 years old. In November 2006, they fled Iraq and went to Qatar as a consequence of the sectarian violence. His father had worked as a legal advisor to an Iraqi ministry before leaving. He is entitled to a pension from Iraq but does not receive one. While living in Qatar, he worked as a legal advisor to a Qatari government ministry. He has no connections to that government and does not receive any monies from it. Since January 2017, Applicant's parents have resided as refugees in the United States. He anticipates they will obtain permanent U.S. resident cards in a year. They live near Applicant. They have no intention of moving from the United States. Applicant sent his parents about \$5,000 annually for about seven years while they resided in Qatar to help pay his mother's medical expenses. He continues to provide financial support when needed. (Tr. 24-27, 37, 43-44; Answer)

Applicant has two siblings. His brother fled Iraq in November 2006 and went to Qatar. He was admitted into the United States as a refugee in December 2016. He resides near Applicant and anticipates receiving permanent U.S. residency in a year. He has no desire to leave the United States. His sister is an Iraqi citizen and a permanent U.S. resident. She and her family resettled in the United States in April 2014. They continue to reside and work in the United States. They live near Applicant. Neither his sister nor his brother can return to Iraq because they will be persecuted for their religious denomination. (Tr. 26-27, 41; Answer). None of Applicant's immediate family members know that he is applying for a security clearance. (Tr. 51)

Applicant's wife was born in Australia. They were married in Iraq in 2005. She has dual citizenship with Iraq and the United States. She resides in the United States. He and his spouse have two children; one son was born in Indonesia and became a U.S. citizen the same day that Applicant did; the other son was born in the United States. Both children reside with Applicant and his wife. (Tr. 22; GE 1)

Applicant's mother-in-law, age 65, and father-in-law, age 75, are citizens of Iraq. They are permanent U.S. residents. They live in the United States half of the year and in Jordan the other half, in particular during winter months because of his father-in-law's health issues. They cannot return to Iraq because of possible persecution. His father-in-law was a legal advisor to an Iraqi ministry. He receives a pension from the Iraqi government. His mother-in-law worked for an Iraqi ministry. She receives a pension from the Iraqi government. When they reside in the United States, they stay with Applicant or rent an apartment nearby. While these in-laws reside in Jordan, Applicant speaks to them once or twice a year at the holidays. Applicant last saw his in-laws in October 2016, when they were residing in the United States. His last contact with them was via a text at a

holiday in June 2017. He has not provided financial support for his in-laws.<sup>2</sup> (Tr. 28-31, 44-48; Answer.) Applicant's wife contacts her parents once or twice a month while they reside in Jordan. (Tr. 52)

Applicant's wife has four siblings. Her two brothers reside in Indonesia. One of her sisters resides in London. Her other sister resides in Austria, but is also a permanent U.S. resident and lives part-time in the United States. (Tr. 49-51) None of Applicant's in-laws know that Applicant is applying a security clearance. (Tr. 51)

In his 2015 e-QIP, Applicant listed foreign contacts with citizens of Iraq, Qatar, and Bahrain. He also listed contacts with people associated with the governments of Iraq and Qatar. (GE 1) Applicant stated that the extent of his communications with all of those people is a holiday greeting once or twice a year. He does not have a close relationship with any of them. They do not know about his work or that he is applying for a security clearance. (Tr. 36-37; Answer)

The last time Applicant had personal contact with a former supervisor with whom he worked at a private company in Qatar was in 2010 at Applicant's retirement party. They exchange holiday greetings once or twice a year. The last time he had personal contact with a Bahraini citizen who worked with him in Qatar at that company was in 2009. They have exchanged holiday greetings two or three times since. The last time he had contact with a Qatari citizen and former co-worker was over a year ago through a holiday text. The last time he had personal contact with his former Iraqi government supervisor was in 2006, prior to Applicant's leaving Iraq. They exchange sporadic holiday greetings. Applicant thinks this supervisor moved to Jordan. (Tr. 54-55; Answer)

Applicant's assets are in the United States. He owns a home which he purchased for \$160,000. He does not have a mortgage on it. He also owns two cars, and has a small 401k fund and a savings account. He does not own property outside of the United States. (Tr. 23-24; AE C, AE D, AE E)

Applicant submitted recommendation letters, awards, and educational certificates attesting to his capabilities and contributions as an interpreter and translator. Two officers with whom he has served in Iraq stated that Applicant's language skills were an invaluable asset to their mission accomplishment. The authors of the letters consider Applicant to be responsible and trustworthy. (Answer; AE 2)

## **Iraq**

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Iraq, as outlined in HE 1 and HE 2, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Iraq. The Islamic State of Iraq and the

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<sup>2</sup> Although it was alleged in the SOR, Applicant denied that he sent his father-in-law \$5,000 yearly. There is no evidence supporting this allegation.

Levant (ISIL or Islamic State) controls some of the country's territory. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Iraq should be avoided. Additionally, human-rights related problems including disappearances, torture, denial of fair public trial, and limits on freedom of speech and expression have been noted.

## **Jordan**

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Jordan, as outlined in HE 1 and HE 3. Jordan is a small, Middle Eastern country governed by a constitutional monarchy. Jordan has a pro-Western foreign policy, and has had close relations with the United States for more than forty years. Torture, arbitrary arrest, prolonged detention, denial of due process, and restrictions on freedom of speech are Jordanian human rights problems. Despite aggressive governmental action against terrorists, the threat of terrorism in Jordan remains high. Terrorists in Jordan target U.S. interests to exploit and undermine U.S. national security interests. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

## **Policies**

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

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

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

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern relating to the guideline 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 includes several conditions that could raise security concerns under AG ¶ 7. Three 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;

(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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant's parents and two siblings now reside in the United States. His parents and brother are awaiting permanent U.S. residency. His sister is a permanent U.S. resident. They are citizens of Iraq, but do not intend to return because they are concerned about possible persecution. None of the above disqualifying conditions are established because these family members no longer reside in Iraq or Qatar, where their presence posed a potential security concern. His father does not receive a pension from the Iraqi government.

Applicant and his wife have ongoing familial connections with his parents-in-law. They are citizens of Iraq and part-time residents of Jordan and the United States. Both in-laws worked for the Iraqi government and receive pensions from that government. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Jordan may seek intelligence or engage in behaviors that are hostile to the United States' interests. Applicant's relationship with his wife and his parents-in-law also creates a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help family members living in Jordan. The evidence is sufficient to raise all three disqualifying conditions as they relate to his parents-in-law.

Applicant has maintained intermittent contact with citizens of Iraq, Qatar, and Bahrain, since leaving those countries.<sup>3</sup> The evidence raises disqualifying conditions under AG ¶ 7(a) and AG ¶ 7(b) as to any Iraqi citizens. However, only AG ¶ 7(b) applies to contacts he has with citizens of Qatar and Bahrain because an issue of heightened risk has not been raised with those countries.

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<sup>3</sup> The Government did not submit a Request for Administrative Notice for Qatar or Bahrain, relating to a heightened risk assessment.

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶¶ 8(a) and (c) have limited applicability. Applicant's spouse has frequent contact with her parents while they reside in Jordan. Because of Applicant's close connections to his spouse and his periodic contacts with his parents-in-law, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are citizens of Iraq and reside part-time in Jordan] could create a risk for foreign influence or exploitation."

Full mitigation was established under AG ¶ 8(c) with respect to Applicant's non-familial foreign contacts that are alleged in the SOR. He credibly testified that his communications with those people are minimal and perfunctory. They occur once or twice a year as social courtesies during religious holidays.

Strong mitigation was established under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has established such connections to the United States. He left Iraq in 2006. He immigrated to the United States in 2010 and he became a U.S. citizen in 2015. His wife and children are U.S. citizens and residents. His parents and two siblings are residing in the United States. His sister is a permanent U.S. resident, and his brother and parents are awaiting that status. He and his wife own a home in the United States and have financial accounts here. He has successfully worked in United States and previously supported the U.S. Forces from 2003 to 2004, while living in Iraq under dangerous conditions. He can be expected to resolve any conflict of interest in favor of the U.S. interest, as he did in the past when he was threatened by the Al Qaeda militia and properly



reported it to U.S. authorities. From March 2017 to July 2017, he was employed in Jordan supporting the U.S. military.

In sum, Applicant's connections to two elderly relatives, who are permanent U.S. residents and reside part-time in Jordan, are less significant than his connections to the United States. His recent employment in support of the U.S. Government, family living in the United States, past successful performance of linguist duties in Iraq, and U.S. citizenship are important factors weighing toward mitigation of security concerns. These connections 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 national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

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

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal and commendable results of his family situation. There is sufficient mitigating evidence weighing in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States since 2010 and has been a citizen since 2015. He worked as a translator for the U.S. Forces between 2003 and 2004 while living in Iraq. After receiving threats from terrorists, he and his immediate family left Iraq in 2006 and never returned. His parents subsequently resided in Qatar until they moved to the United States in January 2017. At this time, his parents, siblings, wife, and children reside in the United States. The likelihood that any of his family members would return to Iraq for any reason is minimal, given the possibility that they would potentially be persecuted. Applicant's elderly parents-in-law also left Iraq for similar reasons, and are unlikely to return. They reside part of the year in Jordan, but are permanent U.S. residents. Applicant's connections to Iraq or other areas in the Middle East have sufficiently

diminished over the past ten or more years, as have those of members of his family. Applicant provided direct support to the U.S. armed forces as a linguist in Iraq. He placed his life in danger while working there. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously. Applicant's colleagues assess him as loyal, trustworthy, and responsible.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant mitigated the security concerns pertaining to foreign influence. Overall, the record evidence leaves me without questions or 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 B: FOR APPLICANT

Subparagraphs 1.a through 1.i: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

SHARI DAM  
Administrative Judge