



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



In the matter of:)
)
) ISCR Case No. 17-00629
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

02/01/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his continuing family connections 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 November 11, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 3, 2017, 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.

Applicant answered the SOR in writing on April 17, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 22, 2017. DOHA issued a Notice of Hearing on August 24, 2017, setting the hearing for September 19, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant testified and offered Exhibits (AE) A through M into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until October 13, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on September 27, 2017. No post-hearing documents were submitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG, but my decision would be the same under either set of guidelines.

Procedural Rulings

Administrative Notice

I took administrative notice of facts concerning Iraq. Those facts are set forth in the following: Government's Request for Administrative Notice for Iraq, marked as Hearing Exhibit (HE) 1. These documents are included in the record. (Tr. 9-10) 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.

Amendment to SOR

At the conclusion of the hearing and based on the evidence admitted, Department Counsel moved to amend Paragraph 1 of the SOR to state as follows:

- a. Your brother and mother are citizens and residents of Iraq.
- b. Your mother-in-law and four siblings-in-law are citizens and residents of Iraq.

Applicant did not object to these amendments, and I granted the motion. The record remained open after the hearing in order to give Applicant adequate time in which to submit additional evidence pertinent to these amendments. (Tr. 43-44) Applicant admitted the allegations in the original SOR.

Findings of Fact

Applicant is 30 years old. He was born in Iraq. He attended high school there. He never served in the Iraqi army, but from August 2006 to November 2008 he worked as a local hire linguist supporting the U.S. forces in Iraq. He was 18 or 19 years old. While performing that work, he was not personally threatened by terrorists, nor was his family. However, the terrorists considered him and all translators to be traitors and still do. (Tr. 53-54)

Based on his work with the U.S. forces, Applicant applied for and was granted a visa through the Special Immigrant Visa program for Iraqi and Afghani translators/interpreters. In November 2008, he entered the United States on that visa. (Tr. 16) In March 2014, he became a naturalized U.S. citizen. (Tr. 13)

Prior to becoming a U.S. citizen, Applicant returned to Iraq in October 2010. He went there for a visit and to marry his wife. He stayed until December 2010 when he returned to the United States and worked as a trainer for the Army. (Tr. 55-56; GE 2) In September 2012, he went to Iraq for six months and lived with his family. He came back to the United States in February 2013 and worked in a factory while waiting for U.S. citizenship. (Tr. 56-57; GE 1, GE 2)

After becoming a citizen in March 2014, Applicant returned to Iraq for a month and then went to Turkey.¹ He worked in Turkey until February 2015. He then went to Iraq until September 2015, where he worked as a translator for a security company, before returning to the United States. In January 2016, he started working for a defense contractor and deployed to Iraq. He continues to work for the contractor. He was home from a deployment at the time of this hearing. (Tr. 15, 35; GE 1, GE 2)

Applicant's parents were born and raised in Iraq. His father is deceased. His mother is a citizen and resident of Iraq. She worked for an Iraqi ministry until she retired. She receives a small pension. She came to the United States and was in the process of obtaining permanent residency, but she decided to return to Iraq after residing in the United States for two months. Applicant contacts her every other day or week. (Tr. 26-28, 36, 61) His mother visited him while he was working in Iraq in September 2017. She knows he works as a translator and has worked as a military translator in the past. His employer was aware of her visit. While in Iraq, he calls her every two or three days. He provides her less than \$2,000 a year for financial support. (Tr. 35-39, 60)

Applicant has two brothers. One brother is a citizen and resident of Iraq. He works for a U.S. aid agency in Iraq. Applicant communicated with him a month ago at a holiday. Prior to that, he had not communicated with him for two years. Applicant intends to continue communicating with him, but only at holidays. This brother is not

¹ Applicant's e-QIP listed his travel to Iraq as being from May 2014 to September 2015. He also listed that he worked in Turkey from May 2014 to February 2015. During his personal interview in August 2016, Applicant disclosed that he was in Turkey from June 2014 to November 2014 for work. The record is not consistent, as to some of his travel dates, and dates and places of employment.

aware of Applicant's work as a translator. The last time Applicant saw his brother was in 2015, while Applicant was in Iraq. His brother is married and has three children. (Tr. 17-18, 34, 39)

Applicant's other brother is an Iraqi citizen, residing in the United States. He is in the process of receiving permanent residency. (Tr. 20-21) His only sister is an Iraqi citizen and a U.S. permanent resident. (Tr. 22-24)

Applicant's wife is 27 years old and was born in Iraq. She is an Iraqi citizen. She graduated from a teaching institute there. (Tr. 52) She came to the United States in 2016 and resides with Applicant. She is waiting for a permanent resident card. Their daughter was born in Iraq, and resides with them. She, too, is waiting for a permanent resident card. (Tr. 33; Answer)

Applicant's mother-in-law is a citizen and resident of Iraq. She is a housewife. She does not know about Applicant's work as a translator. Applicant's wife speaks to her mother every week. The last time he had personal contact with her was in 2015, while he was visiting. (Tr. 24-26)

Applicant's wife has seven siblings. Four of them are citizens and residents of Iraq. They are students and live with his mother-in-law. His wife communicates with them when she calls her mother. (Tr. 41) Applicant has cousins and other members of his family who are citizens and residents of Iraq. He contacts them twice a year at holidays. (Tr. 30)

Applicant has retirement accounts in the United States. He does not have any property or assets in Iraq. (Tr. 17, 52)

Applicant submitted recommendation letters attesting to his capabilities and contributions as an interpreter and translator. Three U.S. military officers with whom he has served stated that Applicant's language skills, and his knowledge of Iraq and its culture, were an invaluable asset to their mission accomplishment. They consider him to be extremely responsible and trustworthy. (AE F)

Iraq

I have taken administrative notice of facts contained in U.S. Government pronouncements concerning the state of Iraq, as outlined in HE I, 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 Levant (ISIL or Islamic State) control 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. (HE I.)

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 has ongoing and commendable familial connections with his mother and brother, who are residents and citizens of Iraq. His in-laws are also citizens and

residents of Iraq, and his wife maintains regular family connections with them. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Iraq may threaten Applicant and his family, as they may seek intelligence or engage in behaviors that are hostile to the United States' interests. 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 and Applicant's admissions are sufficient to raise these disqualifying conditions.

After the Government produced substantial 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 of this case:

(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 and his wife have ongoing and regular family relationships and contacts with their parents, siblings, and extended family members, who are lifelong residents and citizens of Iraq. He provides financial support to his mother, who recently visited him while he was working in Iraq. Although Applicant honorably supported the U.S. operations in Iraq between 2004 and 2006, and again from early 2016 to the present, he has done so under conditions that he knows could place his family members under a continuing heightened risk. He is a loyal and dedicated U.S. citizen, but the potential for conflict of interest situations created by his family circumstances remain insufficiently mitigated. Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are citizens and residents of Iraq] could create a risk for foreign influence or exploitation."

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 some connections to the United States under this mitigating condition. In 2008, he immigrated to the United States from Iraq, and he became a U.S. citizen in 2014. His wife, child, and one brother are citizens of Iraq. They reside in the United States and await permanent resident status. His sister is a citizen of Iraq and permanent U.S. resident. His financial accounts are located in the United States. Those facts demonstrate some connections to the United States. However, Applicant's frequent visits to Iraq, both prior to and after becoming a U.S. citizen, and his recent long deployment for work, demonstrate longstanding and substantial commitments to Iraq, the place of his birth and upbringing. Applicant has spent about a significant amount of his time in Iraq and Turkey since he first came to the United States on a Special Immigrant Visa in 2008

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 mitigating evidence weighing in favor of granting Applicant a security clearance. He is a mature and intelligent person, who has lived in the United States during the past nine years, at least part of the time, and has been a naturalized citizen since 2014. His spouse, child, brother, and sister also immigrated from Iraq to the United States, although only his sister is a permanent resident. In his employment from 2004 to 2006, and from 2016 to the present he has provided direct support to the U.S. armed forces as a linguist. 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.

However, there are significant factors that weigh against granting Applicant a security clearance at present. First, a Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there.² Iraq is a dangerous place because of violence from terrorists and insurgents. These entities continue to threaten the Iraqi Government, the interests of the United States, U.S. Armed Forces, and those who cooperate with and assist the United States. Although the Iraqi Government is a U.S. ally, it does not fully comply with the rule of law or protect civil liberties in many instances. Applicant is aware of those dangers, having worked as a translator and knowing that terrorists portray translators as traitors. Second, Applicant had numerous connections to Iraq before he immigrated to the United States in 2008, and has spent substantial periods in Iraq since then. Third, he maintains regular contact with family members in Iraq, in particular his mother, to whom he speaks frequently and sends financial assistance. She recently visited him in the city of his employment. She is aware that he assisted U.S. forces in Iraq in the past and is working as a translator again. A terrorist or insurgent could easily learn about his work and attempt to retaliate against his relatives or to coerce Applicant, through his relatives, to compromise classified information.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant failed to mitigate the significant security concerns pertaining to foreign influence. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Any doubt concerning personnel being considered for national security eligibility must be resolved in favor of the national security.

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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	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 access to classified information. National security eligibility is denied.

Shari Dam
Administrative Judge

² See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

