



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-00717
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq., and Ryan C. Nerney, Esq.

12/13/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence), based on family ties to Iraq, and E (Personal Conduct), based on responses to questions in two security clearance applications (SCAs). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted security clearance applications (SCAs) May 11, 2015, and January 17, 2017. (GX 1 and 2.) On March 17, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and E. The DOD CAF acted 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) implemented by the DOD on September 1, 2006.¹

Applicant answered the SOR on March 23, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 3, 2017, and the case was assigned to me on July 19, 2017. On August 16, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 14, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. DOHA received the transcript (Tr.) on September 22, 2017.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Iraq. (GX 4.) 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 Hearing Exhibit I. (Tr. 8-9.) The facts administratively noticed are set out below in my findings of fact.

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.d. He did not expressly admit or deny the allegations in SOR ¶¶ 2.a-2.e, but offered explanations. I have treated his explanations as denials. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old linguist employed by a defense contractor since March 2017. (Tr. 33.) He was born and educated in Iraq. He avoided military service in the Iraqi Army by paying fees to Iraqi officials.

Applicant worked for a defense contractor in Iraq from 2007 to 2009, and then came to the United States on a special immigration visa and was granted permanent resident status. His program manager in Iraq ranked him in the top 1% of his peer group, and described him as "extremely organized, punctual, loyal, intelligent, well-spoken, hard-working, and ethical." Applicant witnessed numerous bombings, mortar attacks, and insurgent attacks and was the direct target of some of them. (AX C at 1; Tr. 25-26.) Before Applicant's family moved to the United States, they received threatening phone calls and letters because of his work with the U.S. military forces. (Tr. 43.) A senior military officer described Applicant as an "exceptional employee," who accepted

¹ Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case

² Applicant's personal information is extracted from his security clearance applications (GX 1 and GX 2) and his personal biography (AX A) unless otherwise indicated by a parenthetical citation to the record.

the risk to himself and his family through his association with U.S. military forces. (AX C at 3.) After about a month in the United States, Applicant returned to Iraq, where he worked as a linguist until October 2011. While in Iraq, he was given a common access card (CAC) and was cleared for access to U.S. military bases throughout Iraq. He became a U.S. citizen in January 2015. He has never held a security clearance.

In March 2015, Applicant married an Iraqi citizen living in the United States, and they have a newborn son that Applicant had not seen until he returned to the United States for his hearing. (Tr. 17-18.) Applicant's wife's parents have lived in the United States for more than three years. (Tr. 36.) His wife intends to become a U.S. citizen as soon as she is eligible. (Tr. 20.) His mother and sister are Iraqi citizens living in the United States. His brother is a citizen and resident of Iraq. When Applicant submitted his most recent SCA, his brother was working for an Iraqi ministry in a telecommunications job unrelated to Iraqi military or security forces. Applicant has virtually no contact with his brother and was not sure at the hearing whether his brother was still employed by the Iraqi government. He last saw his brother at their father's funeral. (Tr. 24.) Applicant's father served in the Iraqi Army until he retired in 1989. His father passed away in 2015, before Applicant submitted his second SCA. (Tr. 28.)

Applicant owns three houses in the United States, one of which is the family residence. He owns no property in Iraq. (Tr. 19.) After Applicant's father passed away, the family home was sold and the proceeds were split among Applicant and his two siblings. Applicant received about \$80,000. (GX 3 at 9.)

When Applicant submitted his two SCAs, he answered "No" to Question 15, asking whether he had ever served "as a civilian or military member in a foreign country's military, intelligence, diplomatic, security forces, militia, other defense force, or government agency." In both SCAs, he also answered "No" to Question 18, asking whether any of his relatives were "associated with a foreign government, military, security, defense industry, foreign movement, or intelligence service." He did not disclose that his father was a retired colonel in the Iraqi Air Force. In both SCAs, he answered "No" to Question 20B, asking if, in the past seven years, he had "any contract with a foreign government, its establishment or its representatives, whether inside or outside the U.S." He did not disclose that his brother worked for an Iraqi government ministry.

Applicant testified he did not believe that Question 18 in the two SCAs applied to his father, because his father retired in 1989. His father passed away after he submitted the first SCA and before he submitted the second SCA. Applicant also testified that he did not believe that Question 20B applied to his brother, because he brother worked in the U.S. equivalent of a telephone company and was not involved in sensitive government work. (Tr. 27-29.) Finally, Applicant testified that he voluntarily disclosed his father's military service and his brother's employment in a follow-up interview by a security investigator after he submitted his second SCA. (Tr. 43-45.) A summary of the follow-up security interview was not introduced in evidence.

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 United States is committed to building a strategic partnership with Iraq. Iraq is a key partner for the United States in the region and a voice of moderation and democracy in the Middle East. It has a functioning government, is playing a constructive role in the region, and has a bright economic future. The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues. None of the administrative notice documents indicate that 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.

Numerous terrorist and insurgent groups are active in Iraq, including ISIS and anti-U.S. sectarian militias. The U.S. government considers the potential security threats to U.S. personnel sufficiently serious to require them to live and work under strict security conditions. The U.S. Department of States warns U.S. citizens against all travel to Iraq because it is extremely dangerous.

An overwhelmingly number of human-rights abuses were committed by ISIS, including attacks on civilians. However, human-rights abuses by Iraqi civilian authorities and other state-sponsored organizations also have occurred. They included disappearances; cruel and degrading treatment or punishment; hard and life-threatening conditions in detention and prison facilities; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; limitations on freedom of expression; social, religious, and political restrictions in academic and cultural matters; and abuse of women and ethnic, religious and racial minorities.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

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

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant's wife, mother, and sister are citizens of Iraq, residing in the United States (SOR ¶¶ 1.a-1.c). It also alleges that Applicant's brother is a citizen and resident of Iraq, employed by an Iraqi government ministry (SOR ¶ 1.d).

The security concern under this guideline 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 maybe 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 following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 7(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;

AG ¶ 7(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;

AG ¶ 7(c): failure to report or fully disclose, when required, association with a foreign person, group, government, or country; and

AG ¶ 7(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.

AG ¶¶ 7(a) and 7(e) require 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.

When foreign family ties are involved, the totality of an applicant’s family ties as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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).

Applicant’s ties to his wife, mother, and sister, all of whom reside in the United States, do not present the heightened risk required to establish AG ¶¶ 7(a) and 7(e) and do not raise the potential conflict of interest in AG ¶ 7(b). However, Applicant’s ties to his brother, a citizen and resident of Iraq employed by a government ministry, are sufficient to raise AG ¶ 7(a) and 7(b). Applicant’s failure to disclose his father’s Iraqi military service and his brother’s employment by an Iraqi ministry in his SCAs establishes AG ¶ 7(c).

The following mitigating conditions are potentially applicable:

AG ¶ 8(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;

AG ¶ 8(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

AG ¶ 8(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) is established for Applicant's wife, mother, and sister. It is not established for Applicant's brother. Although Applicant has minimal and infrequent contact with his brother, he has not rebutted the presumption that his contacts are not casual.

AG ¶ 8(b) is established. Applicant has deep and longstanding relationships and loyalties in the United States. Furthermore, he has a track record of complying with security regulations and procedures in high-risk circumstances in which he made significant contributions to national security. See ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008); ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008).

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his two SCAs by deliberately failing to disclose his Iraqi military service (SOR ¶¶ 2.a and 2.b); falsified his May 2015 SCA by deliberately failing to disclose his father's Iraqi military service and his brother's employment by an Iraqi ministry (SOR ¶ 2.c); and falsified his two SCAs by deliberately failing to disclose his brother's employment by an Iraqi ministry (SOR ¶¶ 2.d and 2.e).

The concern under this guideline is set out in AG ¶ 15:

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

SOR ¶ 2.d duplicates the allegation in SOR ¶ 2.c that Applicant falsified his May 2015 SCA by deliberately failing to disclose his brother's employment by an Iraqi ministry. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR

Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved SOR ¶ 2.d for Applicant.

The relevant disqualifying condition is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” For the reasons set out below, I conclude that this disqualifying condition is not established.

There is no evidence in the record that Applicant served in the Iraqi military. Thus, SOR ¶¶ 2.a and 2.b are not established.

Applicant’s explanation for not disclosing his father’s military service in the May 2015 SCA was plausible and credible. The May 2015 SCA was Applicant’s first experience with the security clearance process, and English is his second language. Question 18 is written in the present tense. Applicant’s father had been retired for about 16 years when Applicant submitted his first SCA, and Applicant reasonably believed that his father was no longer “associated” with the Iraqi government and military.

Applicant’s explanation for not disclosing his brother’s employment also was plausible and credible. Question 20B asked if he “had any contact with a foreign government, its establishment or its representatives.” Applicant had minimal contact with his brother, knew very little about his job, and believed that he worked for the equivalent of a telephone company. His belief that his brother was not a “representative” of the Iraqi government was reasonable and plausible. Based on Applicant’s explanations, I conclude that SOR ¶¶ 2.c, 2.d, and 2.e are not established, and no disqualifying conditions under this guideline are established.

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).³

I have incorporated my comments under Guidelines B and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines B and E, and evaluating all the

³ The factors are: (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.

evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his family ties to Iraqi and his responses to questions about his family in his SCAs.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
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Subparagraphs 1.a-1.d:	For Applicant
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Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
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Subparagraphs 2.a-2.e:	For Applicant
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Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge