



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01059

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Jason Perry, Esq.

05/23/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is granted.

Statement of the Case

On May 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

¹ 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.

Applicant answered the SOR on May 15, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 25, 2018. I convened the hearing as scheduled on March 22, 2018. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits (AE) A through I. There were no objections to any of the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on March 30, 2018.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Iraq. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.² I have also considered the U.S. State Department fact sheet provided by Applicant.³ The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He never married and has no children. He was born in Iraq. He immigrated to the United States in 1992 after being granted political asylum and became a naturalized citizen in 2009. He has worked for his present employer, a federal contractor, since August 2015, and has worked with different federal contractors in the past, sometimes serving with U.S. forces overseas. He has worked as a social media analyst advising on cultural affairs in support of teams in Iraq and Afghanistan. He was unemployed from September 2011 to December 2014.⁴

Applicant attended college in Iraq. He was arrested during his senior year and imprisoned from 1986 to 1989 without being charged with an offense. Applicant was repeatedly tortured. His physical scars remain. He refused to admit to crimes he did not commit. He stated he did what he needed to do to stay alive. In 1989, he was released and resumed his education.⁵

After earning a college degree, Applicant was conscripted to work as an Iraqi soldier in a civilian factory. In January 1991, during Operation Desert Storm, his orders were canceled, and he was ordered to attend basic military training. He deserted after

² Source documents are attached to Hearing Exhibit I.

³ AE H.

⁴ Tr. 15-17, 30.

⁵ Tr. 21-23, 64.

three weeks. He and his younger brother were part of a group that attempted to overthrow the Saddam Hussein regime. He testified that the Republic Guard squelched the uprising. They drove his group to the Iraqi border and brutally massacred people in the streets.⁶

After several months, Applicant and his younger brother turned themselves in to the U.S. military checkpoint in Saudi Arabia and sought political asylum. They lived in a refugee camp for 16 months and were granted asylum by both Finland and the United States. They both chose to immigrate to the U.S. Applicant explained that his father gave him a copy of the U.S. Constitution when he was in middle school. Applicant also read American literature, listened to American music, and watched American television. He was influenced by these things.⁷

Applicant's father was a teacher and union activist, who was outspoken about the rights of the Iraqi people and critical of the Hussein regime. His father was executed in 1986. His mother, also a teacher, was denied the opportunity to teach after her husband's execution, and was given only 25% of a pension. She passed away in 2004. Applicant was unable to see her before she died.⁸

Applicant has four brothers and a sister. His younger brother, who was also granted political asylum, immigrated with Applicant and became a naturalized U.S. citizen in approximately 2004. He also served with U.S. forces in Iraq. He was injured by an improvised explosive device during his second deployment. He now attends law school in the U.S. Applicant testified that his four siblings that remained in Iraq had little choice. They did not have passports or the option to apply for political asylum while living in Iraq at the time because they would have been killed.⁹

Another brother is 43 years old. He is a heavy equipment operator for a private company. He is married with three young children. His wife is a homemaker and does not work outside the home. He last saw this brother in 2014. Applicant had telephonic contact with his brother after Applicant's heart operation in 2017.¹⁰

Applicant's second brother is 50 years old. He earned an engineering surveying degree. Applicant explained that during the Hussein's regime people who attended college had to work for the government for a period. Almost all jobs at that time were affiliated with the government. This brother was not permitted to attend law school in Iraq for a period because Applicant and his other brother were in the United States. After the fall of the regime in 2003, he attended law school. He worked for the city government before starting his own practice. His brother's wife is a teacher and their children are in

⁶ Tr. 20-21.

⁷ Tr. 17-20.

⁸ Tr. 27-29.

⁹ Tr. 23-27.

¹⁰ Tr. 47-50.

middle school. Applicant last saw his brother in May 2014, and he last spoke to him in 2017.¹¹

Applicant's third brother in Iraq is married with no children. He is 33 years old and has a business and accounting degree. He worked for an Nongovernmental Organization (NGO) until 2016, when his lawyer brother hired him as his office manager. Applicant last saw this brother in 2014 and speaks to him by telephone two to three times a year. In 2016, he sent his brother \$300 due to a medical emergency. He also sent him money when his brother was in college.¹²

Applicant's sister is 44 years old. She lived with her family until she married and then moved to her husband's home. Her husband is a heavy equipment operator. Applicant last saw her in 2014 and spoke with her in 2017.¹³

None of Applicant's relatives living in Iraq have visited him in the United States. When he was working in Iraq, he made sure he had limited contact with his relatives to ensure their safety. Because he was imprisoned by Saddam Hussein, he does not share this information with anyone. He does not disclose his ties to federal contractors. His siblings usually contact him by telephone about three times a year. They do not correspond by any other medium. There are ties of affection because they are from the same family, and he is a father figure. Applicant testified that he could not protect his family in Iraq against terrorists. His loyalty to the U.S. comes first. He stated if anyone tried to pressure him in any way he would report the conduct to the authorities. He stated his family lives in a relatively safe area in Iraq.¹⁴

Applicant has taken trips to Iraq since moving to the United States. He returned in 2004 to work for a NGO affiliated with the U.S. Department of State. The job was located in the "green zone" of Bagdad. He was careful contacting family members to ensure their safety. All of his siblings in Iraq live in the same town. He visited them about every two months. He returned to the United States in 2005. From December 2010 to January 2011, Applicant returned to Iraq for his uncle's funeral. While there he visited his siblings for a couple of days. His cousin was killed by a car bomb in January 2012, and Applicant returned for the funeral. While there he visited with his siblings. From December 2013-January 2014, he again visited Iraq. A friend tried to arrange a marriage for him, but Applicant stated the woman was quite religious, and he was unwilling to change his lifestyle. He does not foresee any possibility of a future arranged marriage. He visited his family for one day during this trip. This was the last time he visited his family in Iraq.¹⁵

¹¹ Tr. 50-53.

¹² Tr. 53-56.

¹³ Tr. 56-59.

¹⁴ Tr. 56, 67-74.

¹⁵ Tr. 31-38, 60-61,

Applicant has never held an Iraqi passport. He only holds a U.S. passport. He does not maintain any contacts in Iraq, except for his siblings. He has never worked for the Iraqi government. He does not own property in Iraq. He has a 401(k) pension plan in the U.S. His loyalty is only to the United States. He considered the day he entered the United States as his second birthday. He has lived under a dictator and understands the lack of freedom. He is grateful for his civil liberties in the United States. His family does not know the nature of his job. He has worked at various jobs in support of the U.S military mission in Iraq and Afghanistan. Because of his imprisonment in Iraq, he is private about his life and does not reveal personal information.¹⁶

Character letters provided by supervisors, coworkers, and friends describe Applicant as professional, valuable, knowledgeable, caring, patient, disciplined, selfless, and a trusted team member, who has contributed to the success of the mission, and is loyal to the United States. He is mindful and respectful of the rules and regulations. His performance evaluations reflects his performance as “exceptional” and “exceeds expectations.”¹⁷

Iraq¹⁸

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

Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks.

The U.S. Government considers the potential personal security threats to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines.

There are significant human rights problems in Iraq to include: sectarian hostility, widespread corruption, lack of transparency at all levels of government and society that have weakened the government’s authority and worsened effective human rights protections. Iraqi security forces and members of the Federal Police have committed human rights violations, which include killing, kidnapping, and extorting civilians. ISIS is also responsible for human rights abuses. There are also problems that include harsh

¹⁶ Tr. 17, 38-46, 60-61, 66; AE G.

¹⁷ AE A, B, C, D, E, F, I.

¹⁸ HE I; AG H.

and life-threatening conditions in detention and prison facilities, arbitrary arrest and lengthy pretrial detainment, denial of fair public trial, limits on freedom of expression, freedom of the press, censorship of religion, limits on peaceful assembly, and societal abuses of women.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this 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 or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant's four siblings are citizens and residents of Iraq. Applicant has ties of affection to them. They have telephonic contact two to three times a year. He last visited them in 2014. He sent money to a family member for medical treatment and helped a brother during college. Applicant's family residing in Iraq creates a heightened risk and a potential foreign influence concern.

The United States Department of State's warns U.S. citizens against travel to Iraq because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in Iraq that specifically target Americans. ISIS and other terrorist groups are prevalent and are active throughout the country. Report on human rights for Iraq notes sectarian hostility, widespread corruption, lack of transparency at all levels of government and society. Iraqi security forces and members of the Federal Police have committed human rights violations. ISIS is also responsible for human rights abuses.

There are widely documented safety issues for residents of Iraq because of terrorists and insurgents. Applicant has supported the U.S. Government through his work as a cultural advisor and is willing to do so in the future. Numerous linguists, translators and advisors supporting U.S. forces, have family living in Iraq. Thousands of the U.S. and coalition armed forces and civilian contractors serving in Iraq are targets of terrorists along with Iraqi civilians who support the Iraq Government and cooperate with coalition forces.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iraq with the United States, and the situation in Iraq places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Iraq do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Iraq.

While there is no evidence that intelligence operatives or terrorists from Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iraq has an enormous problem with terrorism. Applicant's relationships with relatives living in Iraq create a potential conflict of interest because terrorists could place pressure on his family living there in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of

foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Substantial evidence was produced of Applicant’s contacts with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable:

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

(b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; 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 siblings are citizens and residents of Iraq. He visits them when he is in the country and talks to them a couple times a year. Applicant’s contact with his family is infrequent, but not casual. AG ¶ 8(c) does not apply.

AG ¶¶ 8(a) and 8(b) apply. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” His father was executed because he opposed the Hussein regime. Applicant also opposed the regime and suffered under it. In 1992, Applicant immigrated to the United States as a refugee after being held in prison and tortured. He was offered political asylum in Finland and the United States. He chose the United States. He became a naturalized citizen in 2009. His brother, who was also granted political asylum, is a citizen and resident of the U.S., and has deployed with U.S. forces in Iraq and was wounded. His other siblings live in Iraq.

Applicant’s years of support to the DOD in Iraq and in the United States as a cultural advisor, including the dangers that service entailed, weigh heavily toward mitigating security concerns. Applicant is currently providing cultural support for missions critical to the Armed Forces. He continues to support the United States’ goals in Iraq. He has expressed his loyalty and commitment to the United States.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens

and resident of Iraq. Like every other resident of Iraq, any of his relatives who may be living in Iraq are at risk from terrorists.

Applicant's siblings have minimal contacts with government entities in Iraq. However, it is important to be mindful of the United States' huge investment of manpower and money in Iraq, and Applicant has supported U.S. goals and objectives in Iraq. Applicant and his siblings living in Iraq are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in Iraq from lawless elements in Iraq.

Applicant's continued connections to his relatives living in Iraq are less significant than his connections to the United States. His employment in support of the U.S. Government, financial interests and bonds to the United States, performance of cultural analyst duties, and U.S. citizenship are important factors weighing toward mitigation of security concerns. Based on Applicant's deep and longstanding relationship and proven loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States. His connections to the United States 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 eligibility for a security clearance by considering the totality of the applicant's conduct and all the 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant serves as a cultural advisor for a federal contractor and has actively supported the U.S. military mission in Iraq. He understands the risks associated with

having family in Iraq. Based on Applicant's past defiance to the Hussein regime, work as a cultural advisor, commitment and loyalty to the United States, he has mitigated the foreign influence security concerns.

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.d: For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge