



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01293

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

06/27/2018

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant mitigated Guideline B (foreign influence) security concerns relating to his connections to family living in Iraq. He also mitigated Guideline E (personal conduct) security concerns relating to his erroneous omission of information on his Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) He did not mitigate personal conduct security concerns relating to his use of countermeasures to pass a polygraph examination, and he did not mitigate Guideline K (handling protected information) security concerns relating to his release of sensitive information. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 30, 2014, Applicant completed and signed an SCA. (GE 1) On November 30, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines B, E, and K.

On January 3, 2018, Applicant responded to the SOR and requested a hearing. On January 25, 2018, Department Counsel was ready to proceed. On March 20, 2018, the case was assigned to me. On April 2, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for May 9, 2018. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 4 exhibits; Applicant offered 17 exhibits; and all proffered exhibits were admitted into evidence. Tr. 26-28; GE 1-4; Applicant Exhibit (AE) A-H, J-R. (Tr. 28-30) On May 22, 2018, DOHA received a copy of the transcript of the hearing. The record closed on May 25, 2018. (Tr. 175-176)

### **Procedural Rulings**

Applicant objected to admissibility of any evidence of polygraphs. (Tr. 12-22; GE 2, 3) Department Counsel did not offer the polygraph test results into evidence. (Tr. 16) Department Counsel urged application of ISCR Case No. 11-03452 at 4-6 (App. Bd. June 6, 2012) which held that evidence of polygraph countermeasures is admissible under Guideline E as evidence of a failure to cooperate with security procedures. (Tr. 21, 168) I conclude evidence of polygraph countermeasures is admissible. (Tr. 22) Applicant offered results of a polygraph test taken in April 2018. (Tr. 100; AE S) I sustained Department Counsel's objection to polygraph test results from a test in April 2018. (Tr. 101; AE III) I did consider the information about the subjectivity of observations of countermeasures described in the April 2018 document and the possibility that a polygrapher could misinterpret Applicant's cultural or personal responses to questions to be countermeasures. (Tr. 99-102; AE III)

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Iraq with six attachments. (Tr. 26-27) Applicant did not object to me taking administrative notice of facts concerning Iraq. (Tr. 27) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Department Counsel's request for administrative notice is granted, and portions of the request are quoted without footnotes in the Iraq section, *infra*.

## Findings of Fact<sup>1</sup>

Applicant's SOR response admits the allegations in SOR ¶¶ 1.a through 1.f and denies the remaining SOR allegations. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 38-year-old linguist and cultural advisor. (Tr. 140) He was born in Iraq. (AE A; GE 1) His father was in the Iraqi Army and was designated as missing in 1982, during the war between Iraq and Iran. (AE A) His mother did not remarry. (AE A) His mother raised Applicant and his sister. (AE A) Applicant worked in construction before being drafted into the Iraqi Army. (AE A) He served in the Iraqi Army from 1997 to 2000, and then he resumed his employment in construction. (AE A)

In 2001, Applicant married, and in 2016, he divorced. (GE 1; AE D) His children are ages 11, 13, and 15. (Tr. 115, 148; AE D) In 2007, he immigrated to the United States with a special immigrant visa, which is used for some linguists who supported U.S. forces in Iraq because they risk retaliation from U.S. enemies in Iraq. (Tr. 140, 156-158) In 2013, Applicant became a U.S. citizen. (Tr. 116-117) He graduated from high school, and he did not attend college. (Tr. 160) He received a security clearance in 2015, and his security clearance was suspended in 2017. (Tr. 164)

## Foreign Influence

Applicant's mother, sister, uncle, and three sons are citizens and residents of Iraq, and all of them, except for his uncle, live in the same home. (Tr. 135, 147) He could not remember how frequently he communicates with his mother. (Tr. 142) In his December 30, 2014 SCA, he said he contacts his mother two to three times a week. (GE 1) He communicates with his sons two or three times a week. (Tr. 144) He communicates with his sister about three times a year. (Tr. 135, 146) In his December 30, 2014 SCA, he said he contacts his sister two to three times a week, and her husband is in the Iraqi Army. (GE 1) He plans to move his sons to the United States in two or three months. (Tr. 135, 144; AE K) Applicant's uncle is a senior noncommissioned officer in the Iraqi Army. (Tr. 136) He has not communicated with his uncle since 2016. (Tr. 137, 148) The last time he met in person with his family in Iraq, except for his uncle, was in 2014. (Tr. 147) His relatives in Iraq have not visited Applicant in the United States. (Tr. 152) His mother and sister do not work for the Iraqi Government. (Tr. 159)

Applicant does not have any bank accounts or property in Iraq. (Tr. 116, 146, 155) He does not have an Iraqi passport, and he does not intend to obtain an Iraqi passport in the future. (Tr. 117; AE C) He provided about \$2,000 of support to his sons in the last several years. (Tr. 149) He has a bank account and home in the United States. (Tr. 153)

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<sup>1</sup> The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

From 2004 to 2007, Applicant was employed in Iraq as a local national linguist. (Tr. 164; AE A) He went on missions with the U.S. Army and Marines in 2004 and 2006. (Tr. 119, 139, 160; AE O; AE P; AE Q; AE R) While serving with the Marines, he “got (blown) up in 2005.” (Tr. 139) He received an injury to his forehead and left leg from an improvised explosive device (IED). (Tr. 139) He said he received treatment in a military hospital. (Tr. 140)

Applicant deployed to Iraq from 2014 to 2016. (Tr. 115, 140) He was employed as a linguist with U.S. forces during those years. (AE B)

### **Polygraph Countermeasures and Unauthorized Disclosure of Sensitive Information**

After extensive voir dire about the DOD polygrapher’s (GP) background, training and experience, Applicant objected to the determination that GP qualified as an expert in the area of polygraphy. (Tr. 28-44; GE 3) I overruled the objection because GP meets the standard in Federal Rule of Evidence 702 to qualify as an expert in polygraphy by reason of his knowledge, experience (over 1,000 polygraphs), training, and education. (Tr. 44-45)

In January 2017, GP gave Applicant a counterintelligence polygraph. (Tr. 45) At the start of the polygraph, he warned Applicant that he should not attempt to manipulate the results, including attempts to change his physiology, dissociate his thoughts, or relax his reactions to questions. (Tr. 48-49) GP observed Applicant changing his body position and breathing patterns in an unusual fashion that caused him to be suspicious that Applicant was employing countermeasures. (Tr. 52-53) GP told Applicant to stop and answer questions naturally. (Tr. 53-54) Applicant’s “atypical physiology” continued after the warning. (Tr. 55) Applicant’s appearance indicated he was “mentally disassociating” from the test or question and altering his physiology. (Tr. 56) The first day the polygraph interview and test took four hours. (Tr. 59)

GP warned Applicant again to stop distorting the data, and GP continued the polygraph. (Tr. 56-57) After the polygraph test, GP confronted Applicant with anomalies in his polygraph, and Applicant disclosed that around January 2016, he overheard linguists discussing a sensitive operation overseas against terrorists. (Tr. 66, 93-94) He telephoned his uncle to warn his uncle to avoid the location where the operation was scheduled to occur. (Tr. 67, 83) GP said that Applicant said he was not given permission to disclose the operation. (Tr. 67) The information was unclassified sensitive information. (Tr. 89)

On day two of his polygraph testing, GP warned Applicant not to engage in any physical actions to manipulate the test results. (Tr. 61) After he began the polygraph, GP observed “the same manipulated, atypical physiology” he saw during the polygraph conduct on the previous day. (Tr. 62) Applicant admitted reviewing Internet materials, including YouTube videos about how to pass a polygraph. (Tr. 63, 124) He learned about dissociation (thinking about something unrelated to the polygrapher’s question) and breathing techniques. (Tr. 63) Applicant admitted engaging in breathing techniques

and dissociative thinking on both days of his polygraph testing in order to pass the polygraph, and GP terminated his polygraph test. (Tr. 65, 68, 83, 94) An audio recording was made of the polygraph tests. (Tr. 66) GP generated a report concerning the polygraph test the day after the second polygraph test, which included Applicant's admissions about countermeasures and disclosure of the sensitive operation to his uncle. (Tr. 92-93; GE 2)

On April 27, 2018, Applicant made a statement indicating he told GP that he did not "look up stuff about how to manipulate the polygraph testing" on the Internet; however, he did seek information on the "process." (AE H) He denied that he tried to learn about how to manipulate the polygraph or that he used countermeasures. (AE H)

At his hearing, Applicant said he told GP that he did not look up information on the Internet about how to manipulate the polygraph; however, he did read information on the Internet about the security clearance process. (Tr. 129-130; AE H) First, he said he watched a video about preparing for the polygraph. (Tr. 131) Later, he said that the video was on how to prepare for the job and not on taking the polygraph. (Tr. 132) Still later, he said he watched a YouTube video on "how to get prepared for the polygraph." (Tr. 150) He said when he took the polygraph test he did not know the meaning of the word "countermeasures." (Tr. 130) He denied that he ever admitted using countermeasures to GP. (Tr. 131) He admitted he gave information about a planned raid to his uncle; however, he denied that he disclosed sensitive information to his uncle or anyone else. (Tr. 133, 151) He said the information he gave his uncle was published information "on the news, or [it] was on TV and it was on the Internet" or a newspaper. (Tr. 91, 123, 133, 138; AE J)

Applicant contended that cultural differences could cause someone being polygraph tested to appear to be utilizing countermeasures because of different methods of communication and body movements. (Tr. 99; AE III)

### **Omission from SCA**

On December 30, 2014, Applicant completed and signed an SCA. (GE 1) He did not disclose his financial support to his family in Iraq. He said he misunderstood the question about providing financial support for any foreign national. (Tr. 117) He did not consider his mother to be a foreign national. (Tr. 117, 137) He did not intend to deceive the government about providing financial support to her. (Tr. 118) When he completed his 2017 SCA, he disclosed his financial contributions to his mother. (Tr. 117; AE M)

In his December 30, 2014 SCA, he did not list his children. (GE 1) He disclosed his birth and education in Iraq and his service in the Iraqi Army. (GE 1) He disclosed some of his family members living in Iraq and his frequent contacts with them. (GE 1)

### **Character Evidence**

A retired Army noncommissioned officer that served with Applicant in Iraq for six months and stayed in touch with him after 2006 described him as honest, loyal, and

patriotic. (Tr. 105-112) He provided character letters from civilians, friends, coworkers, a supervisor, and military personnel ranging from sergeant first class to brigadier general. (AE G) The general sense of his character evidence is that Applicant is honest, courageous, loyal, trustworthy, and diligent. (Tr. 121-123; AE D; AE G) He received two certificates of appreciation for his linguist services. (AE F)

## **Iraq**

The U.S. State Department warns that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence and to avoid all but essential travel to Iraq. The U.S. Government considers the potential threat to U.S. Government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines.

The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is limited given the security environment. Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by improvised explosive devices (IED) occur in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators (EFPs), magnetic IEDs placed on vehicles, human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and shootings using various direct fire weapons. Such attacks may take place in public venues such as cafes and markets.

Iraq witnessed continued terrorist activity in 2016, primarily as a result of the actions of ISIL. In 2016, ISIL remained the greatest terrorist threat globally, maintaining a formidable force in Syria, including a large number of foreign terrorist fighters. ISIL's capacity and territorial control in Iraq has dramatically eroded in the past two years. Although the government of Iraq made significant progress in its campaign to retake occupied territory from ISIL, there remained a security vacuum in parts of Iraq.

In its annual human rights report, the U.S. Department of State reported that severe human rights problems were widespread. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections. Iraqi Security Forces, members of the Federal Police, and the Peshmerga committed some human rights violations, and there continued to be reports of Popular Mobilization Forces killing, torturing, kidnapping, and extorting civilians. ISIL committed the overwhelming majority of serious human rights abuses, including attacks against: civilians, (particularly Shia but also Sunnis who opposed ISIL); members of other religious and ethnic minorities; women; and children.

Observers also reported other significant human rights-related problems: harsh and life-threatening conditions in detention and prison facilities; arbitrary arrest and lengthy pretrial detention . . . denial of fair public trial; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; arbitrary interference with privacy and homes; child soldiers; limits on freedom of expression, including press freedoms; violence against and harassment of journalists; undue

ensorship; social, religious, and political restrictions in academic and cultural matters; limits on freedoms of peaceful assembly and association; limits on religious freedom due to violence by extremist groups; restrictions on freedom of movement; refugee and internally displaced persons (IDP) abuse; both forced IDP returns and preventing IDPs from returning home; discrimination against and societal abuse of women and ethnic, religious, and racial minorities, including exclusion from decision-making roles; trafficking in persons; societal discrimination and violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; seizure of property without due process; and limitations on worker rights.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 has two conditions that could raise a security concern and may be disqualifying in this case:

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



(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant admits frequent contacts<sup>2</sup> with his children living in Iraq, and he has contacts with his mother and sister, who live in the same household. He provides financial support to his family in Iraq.

There are widely documented safety issues for residents of Iraq because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the DOD, and he is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in Iraq. Thousands of United States 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 close family ties with one or more family members living in Iraq is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). This presumption is established for Applicant's mother, sister, and children living in Iraq. However, it is not established for his uncle because he is not a member of Applicant's immediate family.

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

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<sup>2</sup> The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Iraq.

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

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 who may be living in Iraq create a potential conflict of interest because terrorists could place pressure on his family living in Iraq 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. Department Counsel produced substantial evidence 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, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

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." In 2007, Applicant immigrated to the United States, and in 2013, he became a U.S. citizen. He owns property in the United States, and he does not own property in Iraq.

Applicant's years of support to the DOD in Iraq as a linguist and cultural advisor, including the dangers that service entailed, weigh heavily towards mitigating foreign influence security concerns. Applicant wishes to return to Iraq to provide assistance to U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States' goals in Iraq. He has shown his patriotism, loyalty, and fidelity to the United States during his years of support to the DOD while serving in Iraq.

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

citizens and residents of Iraq. Applicant's family living in Iraq continue to be at risk from terrorists.

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 relatives 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.

In sum, Applicant's 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, performance of linguist duties in a combat zone, property in the United States, and U.S. citizenship are important factors weighing towards mitigation of security concerns. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

## **Personal Conduct**

AG ¶ 15 articulates the security concern for personal conduct:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required.

Two conditions that could raise a security concern and may be disqualifying in this case:

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse

determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior . . . ;
- (2) any disruptive, violent, or other inappropriate behavior; and
- (3) a pattern of dishonesty or rule violations.

Applicant failed to disclose his financial support to his family living in Iraq in his December 30, 2014 SCA. He did disclose that he was born in Iraq, had several family members living in Iraq including his mother and children, and his service in the Iraqi Army. The information he disclosed in his December 30, 2014 SCA raised the issue of his connections to Iraq. Moreover, he did not list his children on his SCA, which is an indication that he was careless in his completion of his SCA. I accept Applicant's statement that he honestly misunderstood the question about financial connections to Iraq. He has refuted the allegation that he intentionally failed to disclose his financial support to family living in Iraq on his December 30, 2014 SCA. Personal conduct security concerns relating to SOR ¶ 2.a are mitigated.

Applicant failed to cooperate with security processing by using countermeasures designed to manipulate his polygraph results in January 2017. AG ¶¶ 15(a) and 16(d)(1) are established in relation to SOR ¶ 2.b.

Six personal conduct mitigating conditions under AG ¶ 17 are potentially applicable in this case:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the mitigating conditions are established in relation to SOR ¶¶ 2.b. I did not consider the *results* of any polygraph tests. Applicant went on the Internet and learned about countermeasures to manipulate his polygraph test. He used the manipulation techniques that he learned, and GP detected his manipulations. GP told him to stop his manipulations. He continued his manipulations. Applicant admitted to GP that he went to the Internet and obtained information about manipulating polygraphs, and he used that information to attempt to pass the polygraph. I do not believe Applicant's statements in April 2018 and at his hearing denying that he attempted to manipulate the polygraph test. Personal conduct security concerns are not mitigated.

### **Handling Protected Information**

AG ¶ 33 articulates the security concern relating to handling protected information as follows, "Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern."

AG ¶ 34 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) deliberate or negligent disclosure of protected information to unauthorized persons, including, but not limited to, personal or business contacts, the media, or persons present at seminars, meetings, or conferences"; and "(g) any failure to comply with rules for the protection of classified or other sensitive information".

Applicant was having difficulty during his polygraph examination, and he told GP that in 2016, he disclosed sensitive information about a planned military operation to his uncle, a member of the Iraqi Army. He made this disclosure to his uncle to help his uncle avoid the operation. AG ¶¶ 34(a) and 34(g) apply.

Four mitigating conditions under AG ¶ 35 are potentially applicable:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to

recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) the security violations were due to improper or inadequate training; and

(d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

None of the mitigating conditions apply. Applicant intentionally disclosed sensitive information, and this disclosure could have resulted in compromise of a military operation. I do not find his subsequent claims that the information was already public to be credible. Even if information was public, disclosure is not permitted. Public disclosure of sensitive information by other does not establish mitigation under the facts of this case. Guideline K security concerns are not mitigated.

### **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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines B, E, and K are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant has frequent contacts with his family in Iraq, and he provides financial support to them. His relationships with citizens and residents of Iraq raise important foreign influence security concerns, and they must be balanced against his connections to the United States.

In 2007, Applicant immigrated to the United States, and in 2013, he became a U.S. citizen. His children are in the process of becoming residents of the United States. He owns property in the United States. When he became a U.S. citizen, he took an oath of allegiance to the United States.

Applicant served as a linguist, translator, or cultural advisor for several years in Iraq. He worked for U.S. government contractors. Applicant provided character references and certificates from personnel, who served with him in a U.S. designated combat zone. He made contributions to the U.S. military at personal risk. He is willing to continue to serve in Iraq in support of U.S. Armed Forces as a linguist, risking his life as part of his duties on behalf of the U.S. combat forces in Iraq. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service as a linguist weighs heavily towards mitigating of foreign influence security clearance. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”).

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there.<sup>3</sup> Iraq is a dangerous place because of violence from terrorists and insurgents. These entities continue to threaten the Iraq Government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Iraqi Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Iraqi Governments are allies in the war on terrorism.

The evidence against granting access to classified information is more persuasive. Applicant researched countermeasures designed to manipulate polygraph test results. When he took his polygraph, he used the countermeasures despite being warned not to do so. GP detected his use of countermeasures, and Applicant admitted that in 2016, he released sensitive information to his uncle about a military operation. Applicant also admitted using countermeasures to GP.

Applicant made several false statements. He said: (1) he did not research countermeasures on the Internet before his polygraph; (2) he did not admit to GP that he researched countermeasures on the Internet; (3) he did not use countermeasures to manipulate his polygraph results; (4) he did not admit to GP that he used countermeasures to manipulate his polygraph results; and (5) the information he released to his uncle was not sensitive and was already public. He reiterated these claims in April 2018 in a written statement (AE H) and verbally at his hearing, and I did not find them to be credible.

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<sup>3</sup> 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).



I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated; however, personal conduct and handling protected information security concerns are not mitigated.

### **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 through 1.f:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline K:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert Tuider  
Administrative Judge