



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 17-01353

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

07/30/2018

**Decision**

Harvey, Mark, Administrative Judge:

Applicant mitigated Guideline B (foreign influence) trustworthiness concerns relating to his connections to his family in Iraq. His support of U.S. forces in Iraq and family connections to the United States provide strong mitigation. Eligibility for access to sensitive information is granted.

**Statement of the Case**

On November 16, 2014, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On March 25, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). (Hearing Exhibit (HE) 2)

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 eligibility for a public trust position for Applicant and recommended referral to an administrative judge. (HE 2) Specifically, the SOR set forth trustworthiness concerns arising under Guideline B.

On July 7, 2017, Applicant responded to the SOR and requested a hearing. (HE 3) On September 11, 2017, Department Counsel was ready to proceed. On February 16, 2018, the case was assigned to me. On April 3, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 18, 2018. (HE 1) Applicant's hearing was held as scheduled. (Transcript (Tr.) 4) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 13-14)

During the hearing, Department Counsel offered two exhibits; Applicant offered nine exhibits; and all proffered exhibits were admitted into evidence. (Tr. 16-21; GE 1-2; AE A-AE I) On May 1, 2018, DOHA received a copy of the transcript of the hearing.

The Director of National Intelligence (DNI) issued 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), effective June 8, 2017. The new AGs supersede the previous AGs. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Procedural Rulings**

Department Counsel offered a summary for administrative notice concerning foreign influence trustworthiness concerns raised by Applicant's connections to Iraq. (Tr. 17) Applicant did not object to me taking administrative notice of facts concerning Iraq, and I granted Department Counsel's motion. (Tr. 17) Department Counsel and Applicant indicated they had no objection to me taking administrative notice of facts from the U.S. Department of State website concerning Iraq.<sup>2</sup> 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). Portions of the Department Counsel's request are quoted without quotation marks and footnotes in the Iraq section of this decision, *infra*. The first two paragraphs are from the State Department website U.S. Relations with Iraq Fact Sheet, and the remainder is from Department Counsel's administrative notice request. (Tr. 19-20)

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf).

<sup>2</sup> The first two paragraphs in the Iraq section of this decision are verbatim from the U.S. Department of State website, "U.S. Relations With Iraq Fact Sheet," Bureau of Near Eastern Affairs (Apr. 28, 2017), <https://www.state.gov/r/pa/ei/bgn/6804.htm>. Statements about the United States' relationship with Iraq from the Department of State are admissible. See ISCR Case No. 02-00318 at 5 (App. Bd. Feb. 25, 2004).

### **Findings of Fact<sup>3</sup>**

Applicant's SOR response admitted all of the SOR allegations. Applicant also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 45 years old, and he has been employed by the same government contractor since 2015 in a specialized hospital unit. (Tr. 6, 28; GE 1) He was born in Iraq. (GE A) In 1991, he graduated from high school in Iraq. (Tr. 5) In 1996, he received a bachelor's degree in agriculture engineering in Iraq. (Tr. 6) In 2018, he received a master's degree in engineering and cyber security in the United States. (Tr. 6) He served in the Iraqi military from 1996 to 1998. (Tr. 7) He was a low-ranking enlisted soldier, and his duties involved administrative work. (Tr. 7, 29) From 2004 to 2006, Applicant served with U.S. forces in Iraq as an interpreter. (Tr. 6) In 1999, he married, and his two children are ages 15 and 16. (Tr. 8) In 2017, he divorced. (Tr. 8) His former spouse lives in the United States and is a U.S. citizen. (Tr. 8)

### **Foreign Influence**

In 2008, Applicant emigrated from Iraq to the United States under the Special Immigrant Visa for Iraqi Translators Program. (Tr. 24; AE C) In 2013, he became a U.S. citizen. (Tr. 24) When he became a U.S. citizen, he took an oath of allegiance to the United States. He did not use his Iraqi passport after he came to the United States in 2008. (Tr. 27) He gave his Iraqi passport to his security manager in 2014, and it expired in 2015. (AE I)

When Applicant came to the United States, he brought his spouse and two children with him. (Tr. 24) In 2014, he received a U.S. passport, and the only passport that he possesses is his U.S. passport. (Tr. 26) From 2008 to present, he traveled to Iraq twice, in 2015 and 2018. (Tr. 40; GE 1) His trip in 2015 was to begin the transfer process for his ownership in the land he owned in Iraq, and his trip in 2018 was because his family was having a memorial service for his father. (Tr. 40; AE B) He informed his security office that he was traveling to Iraq. (Tr. 40) He does not intend to travel to Iraq for many years. (Tr. 40) His children attend high school in the United States. (Tr. 43)

Applicant's mother, sister, and brother are citizens and residents of Iraq. (SOR response ¶¶ 1.a, 1.b, and 1.c) He communicates with his mother about once a month. (Tr. 32) His brother and sister and their families live with Applicant's mother. (Tr. 34, 37) He communicates with his brother about once a month. (Tr. 35) He has not communicated with his sister for about two years. (Tr. 34) Applicant's father lived in the United States in the 1980s, and he received a Ph.D. in the United States. (Tr. 33) Applicant's father and brother worked for the United States as linguists. (Tr. 33) His father passed away in 2015. (Tr. 33) One of his brothers lives in the United States. (Tr. 35)

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<sup>3</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.

The SOR alleges Applicant jointly owns real estate in Iraq of an approximate value of \$180,000. (SOR ¶ 1.d) In March 2016, Applicant transferred his interest in the property in Iraq to his brother, who was already a co-owner of the property. (Tr. 37) The transfer is documented in the land records in Iraq. (Tr. 23; AE A; AE G; AE H) He is unsure whether his brother will retain the property. (Tr. 37) He does not own any property or have any bank accounts in Iraq. (Tr. 42) He has refuted the allegation in SOR ¶ 1.d.

In 2013, Applicant sponsoring his brother, and his brother's family to emigrate from Iraq to the United States. (Tr. 38; SOR ¶ 1.e) Some of the military officers that supported Applicant's immigration supported his brother. (Tr. 38) The sponsoring process for his brother may not be complete for several years. (Tr. 38) He is willing to withdraw his sponsorship of his brother if continuing it will adversely affect his application for a public trust position. (Tr. 38) His sister would like to come to the United States too, if that is possible. (Tr. 39)

### **Character Evidence**

Applicant served with U.S. forces for 20 months and with Multi-National Forces, Iraq for 19 months. (AE C) A Navy commander indicated Applicant "was the most highly skilled and dedicated of the interpreters with whom he served." (AE C; AE D) When Applicant served with U.S. forces in Iraq, he was shot twice in the leg and once in the shoulder. (Tr. 44) Once a U.S. patrol rescued him from insurgents who were shooting at him. (Tr. 45)

A retired rear admiral served with Applicant in Iraq and has stayed in touch with him. The retired flag officer said:

under the most dangerous of circumstances in an active combat environment, [Applicant's] loyalty and allegiance to the troops he was supporting was not diminished by the severe risks faced by his family at that time. And now, as a U.S. citizen, I have no reason to doubt his loyalty to our Country would remain steadfast, despite the danger his relatives may face in Iraq.

(AE C) A retired Navy commander and a Navy Reserve commander who have known Applicant for 13 years and served with him in Iraq, lauded Appellant's contributions to our forces in Iraq, dedication, diligence, and trustworthiness. (AE D; AE E)

An adjunct professor knows Applicant as a student, and they have a personal relationship. (AE F) The adjunct professor described Applicant as dedicated, articulate, talented, intelligent, and trustworthy.

### **Iraq**

The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. The December 2011 departure of U.S. troops from Iraq marked a milestone in our relationship as Iraq continues to develop as a sovereign, stable, and

self-reliant country. Iraq is now a key partner for the U.S. in the region as well as a voice of moderation and democracy in the Middle East. Iraq has functioning government institutions including an active legislature, is playing an increasingly constructive role in the region, and has a bright economic future as oil revenues surpass pre-Saddam production levels with continued rapid growth to come. The U.S. maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement.

The Strategic Framework Agreement (SFA) between Iraq and the U.S. provides the basis for the U.S.-Iraq bilateral relationship. It covers the range of bilateral issues including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment. Efforts to implement the SFA are overseen by the Higher Coordinating Committee and several Joint Coordination Committees, which meet periodically.

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 censorship; 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 [or a public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. 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.

A person who seeks access to sensitive 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

sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. 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 and trustworthiness 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. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance [or access to sensitive information].” 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 [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.”

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the trustworthiness 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 trustworthiness 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's mother, sister, and brother are citizens and residents of Iraq. Applicant has frequent contacts<sup>4</sup> with his mother and brother living in Iraq. He has sponsored his brother, and his brother's family to immigrate to the United States. Applicant is bound to his family in Iraq by mutual affection.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

There are safety issues for residents of Iraq primarily because of terrorists operating in Iraq. The mere possession of close family ties with relatives or in-laws living in Iraq is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person 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 sensitive information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).<sup>5</sup>

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). The in-law presumption concerning foreign influence is not relevant here because Applicant is divorced, and he has no spouse.

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<sup>4</sup> The Appeal Board has concluded that contact every two months or more 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).

<sup>5</sup> In accordance with "well established DoD policy [Applicant and his family's] religious affiliation play[ed] no part" in this decision. ISCR Case No. 08-06795 at 6 n. 3 (App. Bd. May 25, 2012).



The DOHA Appeal Board has indicated for Guideline B cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an applicant’s family members living in that country 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 burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Iraq or visiting Iraq does not pose a trustworthiness or 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 or visiting Iraq.<sup>6</sup>

Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified [and sensitive] 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. 02-22461, 2005 DOHA LEXIS 1570 at \*11-\*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

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<sup>6</sup> The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at \*20-\*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant’s immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant’s ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified [or sensitive] information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

While there is no evidence that intelligence operatives, criminals, 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, like many countries, has a problem with terrorism. Applicant's family in Iraq "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with relatives who may be living in Iraq or visiting Iraq create a potential conflict of interest because terrorists could place pressure on his family in Iraq in an effort to cause Applicant to compromise sensitive 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 relationships 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 trustworthiness 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 [or eligibility for a public trust position], there is a strong presumption against the grant or maintenance of a security clearance [or access to sensitive information]. 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 [or trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [such] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified [or sensitive] 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).

Applicant has significant connections to the United States. He immigrated to the United States in 2008, and he became a U.S. citizen in 2013. His two children are citizens and residents of the United States. He earned his master's degree in the United States. He is employed in the United States. He took an oath of allegiance to the United States.

Applicant has important connections to Iraq. He lived most of his life in the Iraq, and only ten years in the United States. His mother and two siblings are citizens and residents of Iraq. He has frequent contacts with his mother and brother in Iraq. He traveled to Iraq twice in the last 10 years. Once was to divest his ownership of his land in Iraq. Applicant is bound to his family in Iraq by mutual affection.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family in Iraq. His family in Iraq continues to be at risk primarily from terrorists. Applicant's potential access to sensitive information could theoretically add risk to his relatives living in or visiting Iraq.

In sum, Applicant's connections with his family in Iraq raise serious trustworthiness concerns because of Iraq's problems with terrorists and insurgents. Balanced against this concern are his connections to the United States, which include six factors: (1) his U.S. citizenship; (2) his U.S. employment; (3) his children are citizens and residents of the United States; (4) he is a resident of the United States who only visited Iraq twice in the last 10 years; (5) his oath of allegiance to the United States; and (6) his service in support of U.S. forces in Iraq. AG ¶ 8(b) applies, and Guideline B trustworthiness concerns are mitigated.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance or access to sensitive information 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 access to a public trust position and access to sensitive information "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B 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 is 45 years old, and he has been employed by the same government contractor since 2015 in a specialized hospital unit. In 1996, he received a bachelor's degree in agriculture engineering in Iraq, and in 2018, he received a master's degree in engineering and cyber security in the United States. From 2004 to 2006, Applicant served with U.S. forces in Iraq as an interpreter.

Applicant has frequent contacts with his family in Iraq. 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.

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 from personnel, who served with him in a U.S. designated combat zone including from a retired two-star admiral and two Navy commanders. He made contributions to the U.S. military at personal risk. He risked his life as part of his duties on behalf of the U.S. combat forces in Iraq. He was shot three times while serving in support of U.S. forces. 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 or trustworthiness concerns. 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>7</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 security, economic, and political situations in Iraq have improved in the past three years.

The six factors listed in the previous section are important connections of Applicant to the United States, and they are sufficient to overcome concerns about his connections to Iraq. I have carefully applied the law, as set forth in *Egan*, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Applicant mitigated the trustworthiness concerns under Guideline B (foreign influence).

### **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.e:	For Applicant

### **Conclusion**

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

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Mark Harvey  
Administrative Judge

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<sup>7</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).