



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



In the matter of:)
)
) ISCR Case No. 17-02376
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On October 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted 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 implemented on June 8, 2017 (AG).

Applicant answered the SOR on October 13, 2017, and requested a hearing before an administrative judge. On November 30, 2017, the case was assigned to me. On March 5, 2018, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for March 22, 2018. A subsequent amended notice was issued on March 14, 2018, moving the hearing date to March 21, 2018. I convened the hearing on March 21, 2018. Government exhibits (GE) 1 through 4 were admitted in evidence without objection. The Government's exhibit list and request for administrative notice were marked as hearing exhibits (HE) I and II. Applicant testified, but did not submit any exhibits at the hearing. After leaving the record open for additional evidence submissions, Applicant submitted exhibits (AE) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on March 28, 2018.

Procedural Rulings

I took administrative notice of facts concerning Iraq. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.¹

Administrative or official notice is the appropriate type of notice used for administrative proceedings.² Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports.³

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, with explanations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 34 years old. He was born in Iraq in 1984. He lived there until he immigrated to the United States in 2012. He became a U.S. citizen in 2013, while he was attending Army basic training. He has a bachelor's degree. He is employed by a private security contractor. He is seeking a clearance to fill a linguist position with a federal contractor. He is currently a specialist (E-4) in his state's Army National Guard. He is married with no children. His wife is an Iraqi citizen who is a resident alien in the United States.⁴

¹ The Government's request and the supporting background documents were marked as hearing exhibit (HE) III.

² See 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).

³ See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

⁴ Tr. at 6, 17-18, 21-22, 26; GE 1, 2.

The SOR alleged that Applicant's father (an engineer in the Ministry of Transportation), mother, four siblings, father-in-law (who is serving prison time for fraud), mother-in-law, two aunts (one of whom is a former member of Iraq's Parliament), and a cousin (who works for an Iraqi intelligence agency) are all residents and citizens of Afghanistan.

Applicant was hired locally as a linguist from 2008 to 2011 for U.S. forces in Iraq. He provided linguist services for four different Army divisions during that time. He translated sensitive written and oral documents for U.S. forces, coordinated and supervised non-U.S. forces during joint combat patrols, and provided cultural advice to senior U.S. commanders and noncommissioned officers. Applicant is attempting to transfer from the National Guard to the active duty Army. His wife is a full-time student. Neither intend to return to Iraq to live. His last visit to Iraq was as a contractor in 2016. He did not contact any family members when he was there. His wife has not returned to Iraq since she immigrated to this country.⁵

Applicant has the following relatives who are residents and citizens of Iraq:

1. Applicant's father (F) and mother (M). M has never worked outside the home. F is a mechanic for the Ministry of Transportation. Applicant has quarterly contact with both M and F. He and his wife provide no financial support to M or F. He last saw his parents in 2012, before he immigrated to the United States.⁶

2. Applicant's four siblings (B1, B2, S1, and S2). B1 works as a mechanic and is self-employed. He was in the post-Saddam Hussein Iraqi army for seven years, but he was then discharged. B1 has applied for refugee status to immigrate to the United States. Applicant has monthly contact with B1. B2 attends middle school and lives with his parents. Applicant has monthly contact with him. S1 is a post-graduate student. She is married (but seeking a divorce) with two children. Applicant communicates with S2 less than monthly. S2 is also a student living with her parents. Applicant has quarterly contact with her. He last saw his siblings in 2012, before he immigrated to the United States. Applicant provides no financial support to any of his siblings. They have all expressed a desire to immigrate to the United States.⁷

3. Applicant's father-in-law and mother-in-law. His father-in-law is unemployed. He is in prison because of a fraudulent private business arrangement. His mother-in-law does not work outside the home. Applicant believes his father-in-law receives some sort of Iraqi government pension. He has yearly contact with his in-laws.⁸

⁵ Tr. at 18-20, 24, 26-27, 45; AE B.

⁶ Tr. at 28-31, 45; GE 2.

⁷ Tr. at 31-35, 45; GE 2.

⁸ Tr. at 38-39; GE 2.

4. Applicant's two aunts (A1 and A2). A1 is a former member of the Iraqi Parliament. She served in Parliament from 2006 to 2009. She is an attorney. She is a U.S. permanent resident alien. When she is in the United States, she resides with Applicant. She typically stays a month at a time. Over the last three years, she resided with Applicant approximately three months. The last time she resided with him was in December 2017. When A1 is not living with Applicant, he has monthly contact with her. A2 is a teacher. Applicant has yearly contact with her. He does not provide A2 with any financial support.⁹

5. Applicant's cousin (his mother's cousin). He works for an Iraqi intelligence agency. He was hired in either 2010 or 2011. Applicant has had no contact with him since leaving Iraq in 2012.¹⁰

Character Evidence.

Applicant supplied character references from both his current National Guard supervisors and his chain of command associated with his translator duties from 2008 to 2011. His Guard supervisors describe him as an outstanding asset whom they trust. They recommend granting his clearance. His chain of command from 2008 to 2011 described Applicant as having "an outstanding work ethic" and "exceptionally trustworthy." He was also described as, "a brave patriot and selfless defender of freedom." A U.S. Army major stated, "I offer my unqualified endorsement of his faithfulness, trustworthiness, and loyalty." He also received certificates of appreciation from the Army units he worked with as a translator.¹¹

Administrative Notice.

The U.S. State Department warns U.S. citizens against travel to Iraq as travel within the country remains dangerous. The U.S. Embassy warns that U.S. citizens are at high risk for kidnapping and 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 Islamic State of Iraq and Levant (ISIL) remained the greatest terrorist threat globally, maintaining a formidable force in Iraq and Syria.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

⁹ Tr. at 39-41, 43-44; GE 2.

¹⁰ Tr. at 43-44; GE 2.

¹¹ AE B-C.

¹² HE II.

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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 about 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 explains the security concern about "foreign contacts and interests" as follows:

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 indicates 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;

(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;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity

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, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Iraq and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Iraq does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Iraq who might be coerced by governmental entities, or pressured to assist 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.”¹³ 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.

While there is no evidence that intelligence operatives from Iraq seek or have sought classified or economic information from or through Applicant or his relatives living in Iraq, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a), 7(b), and 7(e) apply based upon Applicant’s family members who are residents and citizens of Iraq and A1’s occasional living arrangements with him. Applicant denied any contact with his cousin since moving to the United States in 2012, and there is no evidence of such contact. AG ¶ 7 (g) does not apply.

AG ¶ 8 lists 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 U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant credibly testified that he has limited contact with his relatives in Iraq. He presented sufficient evidence to establish that it is unlikely that he would be placed in a position to choose between the interest of his relatives living in Iraq and those of the United States. AG ¶ 8(a) applies and AG 8(c) partially applies.

¹³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant has met his burden to establish his “deep and longstanding relationships and loyalties in the U.S.” He worked as a translator from 2008 to 2011 for four different U.S. Army Divisions where he earned praise for his loyalty, bravery, and trustworthiness while serving in harm’s way. He became a U.S. citizen by enlisting and serving in the U.S. armed forces where he currently serves. His National Guard and Army supervisors and coworkers attest to his loyalty, dedication, and overall trustworthiness. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

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. The circumstances tending to support granting Applicant’s clearance are more significant than the factors weighing towards denying his clearance. I considered the recommendations of his coworkers and supervisors, who resoundingly recommend that Applicant be granted his security clearance. I also considered his strong ties to this country, first as a translator serving in harm’s way while assisting U.S. forces, and second, while serving his country and state in the National Guard. He has demonstrated his longstanding loyalty to the United States. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence concerns were 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: - 1.e: For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge