



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



In the matter of:)
)
) ISCR Case No. 17-02568
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

09/07/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence and foreign preference security concerns relating to his connections to Iraq and Jordan because of his deep and longstanding relationships and loyalties in the United States and his willingness to renounce his Iraq citizenship. He is expected to resolve any conflict of interest in favor of U.S. interests. He contributed to U.S. national security by serving as a linguist under dangerous conditions in Iraq, and he wishes to continue to serve under such circumstances in Iraq. Eligibility for access to classified information is granted.

History of the Case

On July 16, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On October 5, 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), effective 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 the foreign influence and foreign preference guidelines.

On December 18, 2017, Applicant responded to the SOR and requested a hearing. (Hearing Exhibit (HE) 3) On May 10, 2018, Department Counsel was ready to proceed. On May 15, 2018, the case was assigned to me. On May 23, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 13, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits; Applicant relied upon the 15 documents attached to his SOR response; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 13, 15, 18-20; Government Exhibit (GE) 1-3; Applicant Exhibit (AE) A-AE N) On June 21, 2018, DOHA received a transcript of the hearing.

Procedural Ruling

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Iraq and Jordan. (Tr. 20) Applicant did not object to me taking administrative notice of facts concerning Iraq and Jordan, and I granted Department Counsel's motion. (Tr. 20-21) 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 and Jordan.¹ 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 requests are quoted without quotation marks and footnotes in the Iraq and Jordan sections of this decision, *infra*. The first two paragraphs and the last paragraph in the Iraq section are from the State Department website U.S. Relations with Iraq Fact Sheet, and the remainder, except for the last paragraph, is from Department Counsel's administrative notice request. (Tr. 20) The

¹ The first two paragraphs in the Iraq section of this decision are 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).

first and last paragraph in the Jordan section are from the State Department website and the remainder is from Department Counsel's administrative notice request.

Findings of Fact²

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.f, 1.h, and 1.i. (HE 3) He also provided mitigating information. (HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 45-year-old linguist, and DOD contractors have employed him for one year in Iraq. (Tr. 8, 20) In 1996, he received a bachelor's degree in Iraq. (Tr. 8-9) In 2014, he was awarded a high school diploma from a learning center in the United States. (AE G) In 1999, he married, and his five daughters are ages 4, 9, 13, 15, and 17. (Tr. 9) His three oldest children were born in Iraq; his fourth child was born in Jordan; and his fifth child was born in the United States. (Tr. 9) He performed his mandatory service in the Iraq army for 18 months. (Tr. 28)

In 2006, Applicant, his wife and three daughters emigrated from Iraq to Jordan because of the violence in Iraq. (Tr. 30-31, 36-37) His brother and sisters were already in Jordan. (Tr. 30) In 2010, the State Department approved Applicant as a refugee, and he emigrated from Jordan to the United States. (Tr. 9-10; GE 2) In 2015, he and his spouse became U.S. citizens. (Tr. 9-10; AE I; AE J) They took the oath of allegiance to the United States. (AE I; AE J) A letter from President Obama to Applicant and his spouse emphasizes the importance of this "solemn oath" and the sacrifices that may be entailed in U.S. citizenship. (AE K) The Naturalization Oath of Allegiance to the United States of America states:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.³

² 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.

³ The language of the current Oath of Allegiance is found in the Code of Federal Regulations Section 337.1 and is closely based upon the statutory elements in Section 337(a) of the Immigration and Nationality Act. U.S. Citizenship and Immigration Services, 8 U.S.C. § 1448, <https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.

From February 2017 to February 2018, Applicant worked in Iraq with U.S. Special Operations Forces and Coalition Forces in Iraq as a linguist. (Tr. 10, 23-25) He plans to return to Iraq to continue to assist U.S. forces. (Tr. 28)

The SOR alleges: (1) Applicant's father, step-mother, step-sister, and two step-brothers are citizens and residents of Iraq; (2) His spouse, five children, and one brother are dual citizens of the United States and Iraq; and (3) His three sisters and one brother are citizens of Iraq and reside in Jordan. In 2016, Applicant told an investigator that Iraq was "my country" and the United States was "my second country." (HE 2)

Applicant admitted: (1) His step-mother, step-sister, and one step-brother⁴ are citizens and residents of Iraq; (2) Applicant and his spouse were born in Iraq; they are U.S. citizens; and they destroyed their Iraq passports; (3) Three of his children were born in Iraq; one was born in Jordan; his children have U.S. citizenship; and they do not possess Iraq passports; (4) One brother is a dual citizen of the United States and Iraq; (5) His three sisters and brother reside in Jordan and are not connected to Iraq except by their Iraq citizenship; (6) Applicant's mother-in-law is a citizen and resident of Iraq; and (7) His father is a citizen of Iraq and currently resides in Jordan. (Tr. 31-50; HE 2)

In 1987, Applicant's mother passed away, and in 1989, his father remarried. (Tr. 31, 49) His father recently moved from Iraq to Jordan because of differences with Applicant's step-mother, and his father believed his daughters living in Jordan would take care of him. (Tr. 31-33) His mother-in-law is a citizen and resident of Iraq. (Tr. 36)

Applicant does not have any current contacts with his step-mother or step-siblings. (Tr. 33) Applicant's brother immigrated to the United States in 2009 or 2010. (Tr. 34) Around 2012, one of Applicant's sisters and her husband and children immigrated to the United States. (Tr. 34) Applicant indicated he and some of his family members residing in the United States had lost or renounced their Iraq citizenship because they had given up or not renewed their Iraq passports. (Tr. 34-35, 40-41) He and his family members are presumed to retain Iraq citizenship unless they have taken affirmative actions to renounce their Iraq citizenships.⁵ He provided his Iraq passport to his security officer, and it was subsequently destroyed. (AE M) He did not describe any affirmative actions to renounce his Iraq citizenship beyond his statements, oath of allegiance, and destruction of his Iraq passport.

Applicant left Iraq in 2006, and he next returned to Iraq in 2016 to visit his father. (Tr. 36-37, 49) His most recent visit to Jordan was in 2010 before he immigrated to the United States. (Tr. 37, 50) He does not intend to visit family in Iraq. (Tr. 38) In 2017, Applicant's spouse and children went to Iraq to visit Applicant's mother-in-law who was ill. (Tr. 42)

⁴ One of his step-brothers was killed in a car accident last year.

⁵ See Iraq Nationality Law, which was amended in 2006 to recognize dual nationality. <https://www.revolvy.com/page/Iraqi-nationality-law>. Applicant was unaware of the process to formally renounce Iraq citizenship. (Tr. 41)

Applicant's three sisters reside in Jordan, and two of them are married to Jordanian men. (Tr. 43) Two of his sisters do not work outside their homes, and one sister is an engineer. (Tr. 43) His family members in Jordan are not employed by the Jordanian government or in the Jordanian military. (Tr. 44) He communicates with his father about every three weeks and with his siblings in Jordan every two or three months. (Tr. 44-45) When his father lived in Iraq, he frequently called or communicated with his father, and he communicated with any step-relatives who were present and wished to say hello to him. (Tr. 54-56) He does not currently communicate with anyone in Iraq. (Tr. 49, 56) He most recently communicated in-person with his step-relatives in Iraq in 2016 when he went to visit his father. (Tr. 49) In sum, Applicant has frequent contacts⁶ with his father and several siblings living in Jordan, and he previously had frequent contacts with his step-siblings in Iraq when he called his father. His relatives in the Middle East are unaware of Applicant's work as a linguist. (Tr. 45-46)

In 2017, Applicant purchased a home in the United States. (Tr. 46) His only bank account is in the United States. (Tr. 47; AE L) He does not provide any financial support to his family in Iraq or Jordan. (Tr. 47)

In his 2016 counterintelligence (CI) interview, Applicant said his first country was Iraq, and his second country was the United States. (Tr. 51) He also referred to Iraq as "his country" several times during his CI interview. (GE 2) He told the investigator that he would not renounce his Iraq citizenship. (GE 2)

At his hearing, he explained that he was born in Iraq, and it was his first country. (Tr. 51) His second citizenship was his U.S. citizenship. (Tr. 51) He was awkwardly explaining to the investigator in chronological fashion his relationships with Iraq and the United States and not rating the priority of his loyalties. (Tr. 51-52) When he first went to Iraq as a linguist, he did it for the money. (Tr. 58) When he served in Iraq, he went outside his base with small Special Operations teams and faced dangers from snipers and improvised explosive devices (IED). (Tr. 57) The military personnel who served with him were "so awesome." (Tr. 57) They risked their lives to protect Applicant from sniper fire and IEDs. (Tr. 57) During his service in Iraq, he changed. (Tr. 58) He wanted to serve in Iraq because he wanted to help the United States and not just for the money. (Tr. 58) The military personnel he served with in Iraq inspired him and caused him to feel patriotism and loyalty to the United States. (Tr. 58)

Character Evidence

On November 27, 2017, Applicant's employer in Iraq described him as professional, trustworthy, and helpful. (AE A) He provided "instrumental" contributions to mission accomplishment. (AE A) Two U.S. Army captains indicated from August to November 2017, Applicant provided training on laws of armed conflict, explosive hazards awareness, marksmanship, and other military skills to Coalition Forces. (AE D) They indicated Applicant was professional, diligent, and responsible. (AE D)

⁶ 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).

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 are at high risk for violence and kidnapping, and advises U.S. citizens not to travel to Iraq. The current travel advisory level is Level 4: Do not travel.

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 Islamic State of Iraq and Syria (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. According to estimates from the UN Assistance Mission for Iraq, acts of terrorism and violence killed more than 7,000 civilians and injured more than 12,000 in 2016. By the end of 2017, Iraqi Security Forces had liberated all territory from ISIL, drastically reducing ISIL's ability to commit abuses and atrocities. Human rights violations continue to be a problem with allegations of unlawful killings and other abuses being made against the Iraqi Security Forces and Popular Mobilization Forces.

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.

The United States' extraordinary commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents and Iraq government problems developing and complying with the rule of law. A top national security goal of the United States is to establish relationships, cooperation, training, and support of the Iraq Government and military in the ongoing war against terrorism.

Jordan

In 2013 and 2014, the U.S. provided Jordan \$2.25 billion in loan guarantees, allowing Jordan access to affordable financing from international capital markets. The U.S.-Jordan free trade agreement (FTA), the U.S.'s first FTA with an Arab country, has expanded the trade relationship by reducing barriers for services, providing cutting-edge protection for intellectual property, ensuring regulatory transparency, and requiring effective labor and environmental enforcement. The United States and Jordan have an "open skies" civil aviation agreement; a bilateral investment treaty; a science and technology cooperation agreement; and a memorandum of understanding on nuclear energy cooperation. Such agreements bolster efforts to help diversify Jordan's economy and promote growth. Jordan and the United States belong to a number of the same international organizations, including the United Nations, International Monetary Fund, World Bank, and World Trade Organization. Jordan also is a Partner for Cooperation with the Organization for Security and Cooperation in Europe.

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein.

The U.S. Department of State assesses the threat of terrorism in Jordan as high; with the capital of Amman currently assessed as a high-threat location for terrorist activity directed at or affecting official U.S. Government interests. Transnational and indigenous terrorist groups in Jordan have demonstrated the capability to plan and implement attacks. Violent extremist groups in Syria and Iraq, including the Islamic State of Iraq and the Levant (ISIL) (also known as the Islamic State of Iraq and Syria, or ISIS) and Jabhat al-Nusra, have conducted attacks in Jordan and continue to plot against local security forces, U.S. and Western interests, and soft targets such as high-profile public events, hotels, places of worship, restaurants, schools, and malls. Jordan's prominent role in the effort to defeat ISIS, and its shared borders with Iraq and Syria, increase the potential for future terrorist incidents.

Although Jordan remained a committed partner on counterterrorism and countering violent extremism in 2016, numerous terrorist incidents reflect the current security situation in Jordan: throughout 2017, multiple vehicle-borne improvised explosive devices detonated in and around a refugee camp in Syria near the Jordanian border; and in October 2017, two homemade explosive devices were found in another refugee camp in Jordan. Also in October 2017, the State Security Court prosecuted six people for sympathizing with ISIS, after they created social media accounts to find Jordanian supporters for ISIS and promote terrorist activity. In September 2017, the State Security Court charged 16 people with a terrorist plot involving the use of automatic weapons to carry out terrorist attacks against public security services; and the Jordanian General Intelligence Directorate arrested a 10-person ISIS cell that was planning to attack security forces and tourist locations using explosive suicide belts. Throughout 2017, there were numerous instances of extremists posting pro-ISIS videos or statements on social media.

U.S. involvement in Iraq and Syria, and the U.S. Government's policies on Israel, have fueled anti-American feelings in Jordan. Recent surveys reflect that over 80% of the Jordanian population has an unfavorable view of the U.S. Government. The U.S. Department of State has assessed Amman as being a high-threat location for political violence directed at or affecting official U.S. Government interests. In December 2017, protests took place at the U.S. Embassy for 27 days after the announcement that the U.S. Embassy in Tel Aviv would move to Jerusalem.

As a regional leader in the Global Coalition to Defeat ISIS, Jordan played an important role in Coalition successes in degrading the terrorist group's territorial control and operational reach. During 2016, Jordanian authorities took legal action against numerous individuals accused of terrorism under Jordanian law. On July 13, 2016, the Jordanian State Security Court filed charges against 21 suspected ISIS affiliates in connection with the pre-emptive March raid on an alleged ISIS safe house in Irbid. The Department of State assesses that the potential for terrorist activity is heightened as Jordan participates in the coalition against ISIS. Extremist groups have carried out terrorist activities against U.S. and Jordanian government targets in Jordan.

Terrorist groups often do not distinguish between U.S. Government personnel and private U.S. citizens, and may target areas frequented by Westerners, such as tourist sites, hotels, restaurants, shopping malls, and transportation hubs.

According to the Department of State 2017 Human Rights Report, Jordan's most significant continuing human rights problems include allegations of torture by security and government officials; arbitrary arrest and detention, including of activists and journalists; infringements on privacy rights; restrictions on freedom of expression; and restrictions on freedom of association and assembly. Impunity remained widespread, and the government did not take sufficiently strong steps to investigate, prosecute, or punish officials who committed abuses.

The Jordanian SSC took legal action against numerous individuals deemed to be terrorists under local law, including the arrest and prosecution of men accused of seeking to join Al-Nusra Front (ANF) and ISIS. Other arrests and prosecutions involved supporting/recruiting for ISIS and attempted travel to/from Syria in support of extremist activities and also for "propagating ISIL ideology," a charge often used for online activity.

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 DNI have established for issuing a clearance.

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

(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.

Applicant admitted: (1) His step-mother, step-sister, and one step-brother are citizens and residents of Iraq; (2) Applicant and his spouse were born in Iraq; they are U.S. citizens; and they destroyed their Iraq passports; (3) Three of his children were born in Iraq; one was born in Jordan; his children have U.S. citizenship; and they do not possess Iraq passports; (4) One brother is a dual citizen of the United States and Iraq; (5) His three sisters and brother reside in Jordan and are not connected to Iraq except by their Iraq citizenship; (6) Applicant's mother-in-law is a citizen and resident of Iraq; and (7) His father is a citizen of Iraq and currently resides in Jordan.

Applicant has frequent contact with his father and his siblings living in Jordan. His spouse is a dual citizen of the United States and Iraq, and she recently visited her mother in Iraq. His and his spouse's frequent contacts with relatives in Iraq and Jordan are manifestations of their care and concern for relatives living in those countries.

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 widely documented safety issues for residents of Iraq and Jordan primarily 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 Iraqi government and cooperate with coalition forces.

The mere possession of close family ties with relatives 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 classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).⁷

⁷ 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).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her 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 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 relationships of Iraq and Jordan with the United States, and the situation in those countries places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in or visiting those countries 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 or Jordan.⁸

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 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

⁸ 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 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.

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).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Iraq or Jordan 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 and Jordan have a significant problem with terrorism. Applicant's family in Iraq and Jordan "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 are living in Iraq and Jordan or visiting those countries create a potential conflict of interest because terrorists could place pressure on his family in Iraq and Jordan 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 relationships with family in Iraq and Jordan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) 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(b) applies. Applicant has frequent contact with his relatives, who are citizens and residents of Jordan. He had frequent contacts with his step-siblings in Iraq until his father moved from Iraq to Jordan. The record does not establish that his spouse lacks frequent contacts with her mother in Iraq. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant resided in the United States from 2006 to 2016.⁹ In 2015, Applicant and his spouse became U.S. citizens. His spouse and children have lived in the United States since

⁹ ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")

Id. at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

2010. He has a home and bank account in the United States. He was employed for one year on behalf of the United States as a linguist in Iraq.

Applicant's support to the DOD in Iraq as a linguist and cultural advisor, including the dangers that service entailed, weigh towards mitigating security concerns. Applicant seeks a security clearance to enable him to continue serving in Iraq providing critical 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 support to DOD while serving in Iraq.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") See *also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Iraq and Jordan. His father, several siblings, and his siblings' families reside in Jordan. His spouse's mother lives in Iraq. Like every other resident of Iraq and Jordan, they are at risk from criminals, terrorists, and human rights violations of those countries' governments.

It is important to be mindful of the United States' huge historical investment of manpower and money in Iraq, and Applicant has supported U.S. goals and objectives in Iraq. Applicant and his family living in Iraq and Jordan are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in those countries from lawless elements in Iraq and Jordan.

In sum, Applicant's connections to his relatives living in Iraq and Jordan 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, and U.S. citizenship are important factors weighing towards mitigation of security concerns. He has not traveled to Jordan since 2010, and he only traveled to Iraq once between 2006 and 2017 to visit family. His connections to the United States taken together are sufficient to overcome the foreign influence security concerns under Guideline B.

Foreign Preference

AG ¶ 9 explains the security concern about foreign preference stating:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 lists conditions that could raise a security concern and may be disqualifying including:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

AG ¶ 10 lists some examples that raise foreign preference concerns. In 2016, Applicant told an investigator that Iraq was “my country” and the United States was “my second country.” This statement of preference for Iraq raises a foreign preference security concern.

AG ¶ 11 describes conditions that could mitigate security concerns including:

- (a) the foreign citizenship is not in conflict with U.S. national security interests;
- (b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;
- (c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;
- (d) the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen;
- (e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern;
- (f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk;
- (g) civil employment or military service was authorized under U.S. law, or the employment or service was otherwise consented to as required by U.S. law; and
- (h) any potentially disqualifying activity took place after receiving the approval by the agency head or designee.

AG ¶ 11(c) applies. After serving with Special Operations personnel in Iraq, Applicant changed his views of the United States. He is more patriotic towards the United States and is willing to sacrifice for the United States. He credibly expressed a willingness to renounce his Iraq citizenship. His oath of allegiance contains a renouncement of foreign allegiance. He provided his Iraq passport to his security officer; it was subsequently destroyed. Foreign preference security concerns are 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 and C are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 45-year-old linguist, and DOD contractors have employed him for one year in Iraq as a linguist. In 1996, he received a bachelor’s degree in Iraq. In 1999, he married, and his five daughters are ages 4, 9, 13, 15, and 17. His three oldest children were born in Iraq; his fourth child was born in Jordan; and his fifth child was born in the United States.

Applicant has frequent contact with his family, who are residents of Jordan and until recently with his step-siblings in Iraq. His spouse’s mother is a citizen and resident of Iraq. Frequent contacts with family in foreign countries are a manifestation of one’s care and concern for relatives living in those foreign countries. There is no evidence that his relatives are Jordan or Iraq government employees or military personnel. His and his spouse’s relationships with residents of foreign countries raise important foreign influence security concerns, and they must be balanced against his connections to the United States.

In 2006, Applicant and his spouse and children left Iraq and moved to Jordan. In 2010, they moved to the United States. In 2015, Applicant and his spouse took the oath of allegiance and became U.S. citizens. He has not been to Jordan since 2010. After leaving Iraq in 2006, he returned to Iraq once in 2016 to visit family and for linguist duties in 2017.

Applicant’s employer in Iraq and two Army captains described Applicant as professional, trustworthy, professional, diligent, and helpful. He provided important contributions to U.S. mission accomplishment in Iraq.

Applicant served as a linguist, translator, or cultural advisor in Iraq. He made contributions at personal risk on behalf of 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 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 and Jordan must take into consideration the geopolitical situation and dangers there.¹⁰ Those countries are dangerous places because of violence from terrorists, and their governments do not respect the full spectrum of human rights. Terrorists continue to threaten the Iraq and Jordan governments, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The United States, Iraq, and Jordan governments are allies in the war on terrorism.

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 and foreign preference security concerns are mitigated. Eligibility for access to classified information is granted.

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.i:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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.

Mark Harvey
Administrative Judge

¹⁰ 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).