



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



In the matter of:

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Applicant for Security Clearance

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) ISCR Case No. 17-02692
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Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

May 25, 2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising from foreign influence allegations his continuing family connections in Iraq, although he mitigated the foreign preference concerns. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

History of Case

On April 11, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 15, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, Foreign Influence, and C Foreign Preference. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹ The SOR spelled Applicant's first name incorrectly.

Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing on October 10, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another Administrative Judge on December 4, 2017, and then transferred the case to me on January 25, 2018. DOHA issued a Notice of Hearing on February 7, 2018, setting the hearing for March 15, 2018. On that date, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. They were admitted without objection. Applicant testified and offered Exhibits (AE) A through H into evidence. AE A, AE B, and AE D through AE H were admitted without objection. Department Counsel objected to AE C, because it was not in the English language. Applicant was given the opportunity to present a certified translation of AE C, but he declined. AE C was not admitted. I granted Applicant's request to leave the record open, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on March 26, 2018. On May 4, 2018, Applicant presented one post-hearing document, which was admitted without objection as AE I.

Procedural Rulings

Administrative Notice

I took administrative notice of facts concerning Iraq. Those facts are set forth in the following: Government's Request for Administrative Notice for Iraq, marked as Hearing Exhibit (HE) 1. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 47 years old. He was born in the Kurdish region of Iraq. He was naturalized as a U.S. citizen in October 2011. He is married to a natural-born U.S. citizen, although they are in the process of divorce. He has no children. He currently works for Lyft and Uber, while awaiting the outcome of his security clearance adjudication. He has been offered employment as an interpreter with a government contractor, who is sponsoring him for a security, clearance. (GE 1; GE 2; GE 3; AE A.)

Applicant returned to the Kurdish region of Iraq from 2012 to March 2016. In March 2016, he returned to the United States. He went back to Iraq for five or six months in 2017, and for approximately 50 days in early 2018. On his most recent trip, he reported being harassed in Iraq, due to possessing an American passport. Two of his suitcases were stolen. (GE 1; GE 2; GE 3; Tr. 48-50, 65-76, 80-83.)

Applicant used his Iraqi passport on multiple occasions after becoming a naturalized U.S. citizen. He explained he used it "for convenience and to avoid all of these procedures" and fees to get a visa. (Tr. 35.) However, his Iraqi passport expired in

2016, and Applicant does not intend to renew it. He used his American passport to travel to Iraq during the 2017 trip. He is willing to surrender his dual Iraqi citizenship. (Tr. 34-37, 55-63). He testified as to why he became a U.S. citizen:

So for me choosing United States and taking the oath, it was the dream that I had dreamed about. I had wanted to leave Iraq since I was teenager. I hate it. I never liked it. My uncle, my mother's brother, was killed by the Iraqis because he was against their regime. And we were always like -- the Iraqis and the Arabs, they were looking at the Kurds as second degree or third degree citizen. We couldn't work in many, many jobs in the Iraqi government just because we are Kurds. Our cities, they were banned. They were very simple. They were agricultural. Everything goes to the Arab cities and then the women and the leftover would come to the Kurdish cities. We were so limited and we never felt equal in that country. And of course the nationalism and the feeling that, okay, those people, they invaded our land. We are not belong to them. We were fed with that by our parents, by our grandparents, and we were all against Saddam and his regime and the Baath Party. So in my conscious and unconscious, I was in a place that was invaded by the Arabs and we are not belong to them. The people -- see, most of the issues with the regimes was not with the people. Of course there's always good and bad. But the people weren't the reason as much as the regimes. So that's why taking the oath, it was a very remarkable moment and I was very proud of -- and for the first time -- I have a very bad voice. For the first time, I felt I am singing and repeating the National Anthem. It was very, very emotional. (Tr. 53-54.)

Applicant's mother is a citizen and resident of Iraq. She is 63 years old. She is a homemaker. His father is deceased. Applicant's mother is supported by a small pension. She suffers from diabetes and high blood pressure. Applicant communicates with her about her health daily. He brings her gifts when he visits Iraq and has sent her approximately \$1,000 in support. (GE 1; GE 2; GE 3; Tr. 25-26, 39-40, 67-70, 78-80.)

Applicant has four sisters who are citizens and residents in Iraq. Contrary to the SOR allegation, only one sister is employed by the Kurdish government and none work for the Iraqi government. That sister manages a career center at a Kurdish university. Applicant communicates with her once per month. His other three sisters work for a non-governmental organization, as a private sector attorney, and at university programs. He is close with his family, and takes his responsibilities as the oldest son seriously. (GE 1; GE 2; GE 3; AE D; AE E; AE G; AE H; Tr. 26-27, 86-103.)

Applicant's brother is a citizen of Iraq and resides in Canada. He works as a human resources specialist at a hospital in Canada. (AE F; Tr. 28, 108-111.)

Applicant was employed by a television station owned by the Kurdistan Regional Government in Iraq from 1999 to 2006, and from 2012 to March 2016. Most recently, he

worked as a public relations manager there, but he has also been a journalist for the television station. It broadcast pro-United States presentations of the news. He took a leave of absence from the television station on June 1, 2016. That leave of absence lapses June 1, 2018, after which time his employment will be terminated. He stands to earn a small pension from his work at the television station. (GE 1; GE 2; GE 3; AE I; Tr. 29-32, 75, 112-119, 124.)

Applicant has a bank account in the United States. (Tr. 126.) He had a bank account in Iraq, but it has been closed. He has never voted in an Iraqi or Kurdish election. (GE 3; Tr. 121.)

Iraq

I have taken administrative notice of facts contained in U.S. Government publications concerning the state of Iraq, as outlined in HE I, including the following: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups are increasingly active throughout Iraq. The Islamic State of Iraq and the Levant (ISIL or Islamic State) controls some of the country's territory. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Iraq should be avoided. Additionally, human-rights related problems including disappearances, torture, denial of fair public trial, and limits on freedom of speech and expression have been noted. (HE I.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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.

The guideline includes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable 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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has ongoing and commendable familial connections with his mother and sisters, who are residents and citizens of Iraq. He also has a small financial interest in a pension as a result of his employment with the television station in Iraq. His brother in Canada is also an Iraqi citizen. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Iraq may threaten Applicant and his family, as they may seek intelligence or engage in behaviors that are hostile to the United States' interests. He was harassed during his most recent trip to Iraq for using his U.S. passport. Applicant's relationship with his relatives also creates a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help family members living in Iraq. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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;

(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.

AG ¶¶ 8(a) and (c) have limited applicability. Applicant has ongoing and regular family relationships and contacts with mother and sisters, who are lifelong residents and citizens of Iraq. He has provided minimal financial support to his mother, and is in daily contact with her. His relationship with his brother in Canada is unlikely to cause a risk, due to close U.S. relations with Canada. Applicant is a loyal and dedicated U.S. citizen, but the heightened risk and potential for conflict of interest situations created by his family in Iraq remain insufficiently mitigated. Applicant was not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are citizens and residents of Iraq] could create a risk for foreign influence or exploitation."

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has established some connections to the United States under this mitigating condition. His financial accounts are located in the United States and his wife is a U.S. citizen and resident. Those facts demonstrate some connections to the United States; however, Applicant's frequent and lengthy stays and employment in Iraq since becoming a U.S. citizen, demonstrate his longstanding and ongoing commitments to Iraq, the place of his birth and upbringing.

AG ¶ 8(f) has applicability to the AG ¶ 7(f) concerns raised by his employment with the television station and any possible small pension he might receive through that job. It was a routine interest that will end on June 1, is unlikely to create a future conflict, and could not be used to influence, manipulate, or pressure Applicant if he returns to Iraq as an employee of a U.S. company.

Guideline C: Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(c) failure to use a U.S. passport when entering or exiting the U.S.; and

(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.

Applicant is a dual citizen of the United States and Iraq. He exercised his Iraqi citizenship when he used his Iraqi passport, despite that fact that he was a United States citizen at that time and had a U.S. passport. He also worked for a Kurdish-run television station. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. One is potentially applicable:

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

Applicant no longer has a valid Iraqi passport. He does not intend to renew it. He is willing to renounce his Iraqi citizenship. He is on a permanent leave of absence from the television station. AG ¶ 11 (c) provides mitigation with respect to this guideline.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. The Guideline B security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal and commendable results of his family situation. There is mitigating evidence weighing in favor of granting Applicant a security clearance. He is a mature person, who has been a citizen of the United States since 2011. His spouse was born and resides in the United States. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously.

However, there are significant factors that weigh against granting Applicant a security clearance. First, a Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there.² Iraq is a dangerous place because of violence from terrorists and insurgents. These entities continue to threaten the Iraqi Government, the interests of the United States, U.S. Armed Forces, and those who cooperate with and assist the United States. Although the Iraqi Government is a U.S. ally, it does not fully comply with the rule of law or protect civil liberties in many instances. Applicant is well aware of those dangers, having two suitcases recently stolen. Second, Applicant had numerous connections to Iraq before he immigrated to the United States, and has spent substantial periods living and working in Iraq since he became a U.S. citizen. Third, he maintains regular contact with family members in Iraq, in particular his mother, with whom he speaks frequently.

² 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).

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant failed to mitigate the significant security concerns pertaining to foreign influence. He mitigated the foreign preference concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Any doubt concerning personnel being considered for national security eligibility must be resolved in favor of the national security.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

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

Jennifer Goldstein
Administrative Judge