



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02863

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Cathryn Young, Esq.

09/14/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated foreign influence concerns raised by his spouse, parents, brothers, and half-brothers who are citizens (or dual citizens) of Iraq, as well as his grandmother, mother-in-law, co-worker, aunts, cousin, and friend, who are citizens and residents of Iraq. His request for a security clearance is granted.

Statement of Case

On October 30, 2016, Applicant submitted a security clearance application (SF 86). On September 26, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B for foreign influence. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on November 21, 2017, and requested a hearing before an administrative judge. The case was assigned to me on February 22, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2018, scheduling the hearing for March 16, 2018. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through 3, which were admitted without objection, and Hearing Exhibit (HE) I for Administrative Notice. Applicant testified on his own behalf and presented Applicant Exhibits (AE) A through F, which were admitted without objection, and HE II. DOHA received the transcript of the hearing (Tr.) on March 27, 2018.

The SOR was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous AG, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Procedural Rulings

The Government and Applicant both requested I take administrative notice of certain facts relating to Iraq. Department Counsel provided a nine-page summary of the facts, supported by nine Government documents pertaining to Iraq, marked as HE I. Applicant presented a four-page summary of facts pertaining to Iraq and Sweden, with three attachments marked HE II. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

The SOR alleged, and Applicant admitted SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.j, and 1.k. He denied the allegations in SOR ¶¶ 1.i, and 1.l. Those admissions are incorporated into the following facts:

Applicant is 40 years old. He was born in the Kurdish region of Iraq. He was married to his first wife from 1996 to 2007, when they divorced. He married his second wife in 2008 in Iraq. They have two minor daughters. (GE 1; Tr. 17-20.)

Applicant immigrated to the United States in 1997. He became a U.S. citizen in May 2007. He worked as a linguist in Iraq from 2005 to 2011. While working there, he met and married his current wife. He did not require a security clearance during that

employment. He chose not to return to the United States to live in 2011. Instead, he remained in Iraq until 2016, with his wife and newborn children until his wife acquired a visa to immigrate to the United States. His children acquired U.S. citizenship through registration of their birth abroad. He has never held an Iraqi passport. He currently works for a private company, where he is a team lead. He seeks a security clearance in connection with a job offer to be a linguist in the Middle East. (AE B; GE 2; GE 3; Tr. 20-26, 88, 95.)

Applicant's wife is a citizen of Iraq and resides with Applicant in the United States. As noted above, Applicant met her while deployed overseas as a linguist. She immigrated to the United States in January 2016. She intends to become a naturalized U.S. citizen, when she is eligible. She holds a job at a U.S. factory, has friends here, and has a bank account in her hometown. (GE 2; GE 3; Tr. 29-34.)

Applicant's father is a citizen of Iraq, who resides in Sweden. He initially immigrated to the United States in 1997 with Applicant, Applicant's mother, and Applicant's siblings. However, once he realized he could not legally have two wives in the United States, he left Applicant's family and moved to Sweden with his second wife and Applicant's half-brothers. He worked as a caretaker in Sweden, but is now retired from that job. Applicant communicates with his father approximately once per month via Facebook Messenger. (GE 2; GE 3; Tr. 34-41.)

Applicant's mother is a citizen of Iraq, residing in the United States. She is 64 years old. She has not returned to Iraq since departing in 1996. She resides with one of Applicant's brothers in the same hometown where Applicant and his wife reside. She is employed in a factory for the past 18 years. She owns a manufactured home and has retirement savings in a 401(K) account. Applicant sees his mother every day, as they commute to work together. (GE 2; GE 3; Tr. 41-48.)

Applicant has three brothers. They all reside in the United States, in the same city. Two brothers are naturalized U.S. citizens. His other brother is legally in the United States on political-asylum status, despite immigration to the United States in 1996. That brother works on and off in construction. Applicant is close to his brothers and maintains frequent contact with all of them. (GE 2; GE 3; Tr. 48-63.)

Applicant's grandmother is a citizen and resident of Iraq. She is a 75-year-old homemaker. She resides with Applicant's aunts. He communicates with his grandmother and aunts on a monthly basis by Facebook messenger. (GE 2; GE 3; Tr. 63-67.)

Applicant's mother-in-law is a citizen and resident of Iraq. She is a 58-year-old homemaker. She calls once every two weeks to visit with Applicant's children, but they do not speak Kurdish and have difficulties understanding their grandmother. (GE 2; GE 3; Tr. 67-69.)

Applicant has five half-brothers, who reside in Sweden and are dual citizens of Sweden and Iraq. Applicant is estranged from four of his five half-brothers. He last spoke to the fifth half-brother approximately one and a half years ago. They are not close. (GE 2; GE 3; Tr. 69-71.)

Applicant's five aunts and a cousin are citizens and residents of Iraq. His aunts are in their 40s. Two work as nurses, one is a doctor's assistant, one is a teacher, and one works for a taxation authority. All are technically employed by the Kurdish regional government. Applicant contacts his aunts at least once per month via Facebook messenger. Applicant's cousin works in a private real estate company. He employed Applicant in Iraq from 2011 to 2016. Applicant speaks to his cousin infrequently, with their last physical contact being in 2016. (GE 2; GE 3; Tr. 73, 76-85.)

While Applicant worked for his cousin in Iraq in 2011, he met a co-worker or "partner," with whom he developed a friendship. Applicant speaks with this friend once a month. (GE 2; GE 3; Tr. 73-75, 85-86.)

Of all of Applicant's listed relatives, only one of Applicant's brothers is aware that Applicant has applied for a security clearance. That brother is also going through the application process to become a linguist for U.S. forces and is applying for a security clearance too. (GE 2; GE 3; Tr. 17-91.)

Applicant testified that he has no financial accounts in Iraq. However, he admitted that he has \$10,000 in cash that his grandmother is holding for him in Iraq. Those funds were from the proceeds of the sale of his home in Iraq. He purchased that home in April 2011 and sold it in January 2016, in anticipation of returning to the United States. He has retirement savings in the United States totaling \$6,287. He has additional U.S. bank accounts totaling over \$50,000. (GE 2; AE D; Tr. 91.)

Applicant presented nine highly favorable reference letters. The first letter, provided by a member of the Special Forces detachment for whom Applicant acted as a linguist, noted that Applicant was "dependable and trustworthy" and that he "trusted him with [his] life while conducting military operations in northern Iraq." (AE E at 1.) A retired infantry colonel, for whom Applicant also provided translation services, also reflected that Applicant is "an engaging, honest, and hardworking individual, and he proved loyal to the United States." (AE E at 2.) The other letters reflect Applicant was a trustworthy and valuable member of their teams. (AE E.) He also has been awarded five certificates of appreciation for his services as a linguist. (AE F.)

Iraq

In October 2005, Iraqis approved a constitution in a national referendum and, pursuant to that constitution, elected a 275-member Council of Representatives, making a successful transition to a constitutional government. The U.S mission in Iraq remains

dedicated to building a strategic partnership. Iraq is now a key partner for the U.S. and is a voice for democracy in the Middle East. (HE II.)

The U.S. Department of State warns U.S. citizens of threats from domestic terrorist organizations operating in Iraq, including the Islamic State of Iraq and Syria (ISIS), Muqtada al Sadr Peace Brigades, Asa'ib Ahl al-Haq, and Kata'ib Hizhallah. Foreign fighters for militia and terrorist organizations are involved in ongoing conflict in Iraq. Terrorist groups continue to exploit ungoverned territory and ongoing conflict to expand their reach, and to direct and inspire attacks around the world. (HE I.)

Political violence in the form of protests occur throughout Iraq. Civil unrest is pervasive. Throughout Iraq, sectarian hostility, widespread corruption, and the lack of transparency at all levels of government and society weaken the government's authority and worsened human rights protections. Significant human-rights abuses including: excessive use of force by security forces; unlawful killings and torture; deficiencies in due process; and the suppression of civil liberties have been noted. (HE I.)

Sweden

Sweden was one of the first nations to recognize U.S. independence in 1783. The United States and Sweden have maintained a strong bilateral friendship since then, based on shared values and mutual interests. Sweden is committed to democracy, human rights, gender equality, and international development. It has a good record on respect for human rights. (HE II.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 information.

Section 7 of Executive Order 10865 provides that adverse 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern 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 notes 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;

(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 has close connections to his grandmother, mother-in-law, and co-worker, aunts, cousin, and friend, who are all citizens and residents of Iraq, as well as spouse, parents, brothers, and half-brothers, who are citizens or dual citizens of Iraq. His contacts with his foreign family members range from daily to monthly. There is an articulated heightened risk associated with having ties to family members in Iraq, due to the activities of terrorist organizations and insurgents operating within its borders. There is no demonstrated heightened risk related to Sweden. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.

Applicant's emotional bonds to his relatives in Iraq have decreased since he left Iraq two years ago and moved with his wife and children to the same U.S. community in which his mother and siblings reside. His bonds with his immediate and extended family in the United States have strengthened since his return. He and his family have adapted to the American way of life and plan to remain in the United States. The majority of his assets are located in the United States. He and his wife are connected to their local community through work and friends. Applicant has honorably served the United States as a linguist in the past. He demonstrated sufficient relationships with the United States,

which outweigh any risks associated with his siblings in Iraq. He is credited with his service in areas of conflict and having assets in the United States. AG ¶ 8(b) provides mitigation.

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 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. Applicant served honorably as a linguist from 2005 to 2011. Those that served with him place a great deal of trust in him. His personal property and investments are located in the United States. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me without doubt as to Applicant's suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for foreign influence.

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:

FOR APPLICANT

Subparagraphs 1.a through 1.i:

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 national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge