



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-02889
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

06/25/2018

Decision

HOGAN, Erin C., Administrative Judge:

On August 30, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence. The action was initially taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On December 7, 2017, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 5, 2018. The case was assigned to me on May 15, 2018. On May 16, 2018, a Notice of Hearing was issued, scheduling the hearing for May 30, 2018. The hearing was held as scheduled. During the hearing, the Government offered three exhibits, which were admitted without objection as Government (Gov) Exhibits 1 - 3. Applicant offered 12 exhibits, which were admitted as Applicant Exhibits (AE) A – L, without objection. The record was held open until June 13, 2018, to allow Applicant to submit additional documents. Applicant timely submitted six additional documents which were admitted as AE M. The Government requested administrative notice be taken of certain

facts regarding the country of Iraq. The administrative notice document was marked as Administrative Notice Document I (Admin Not I). The transcript was received on June 8, 2018. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice - Iraq¹

Iraq is a constitutional parliamentary republic. The outcome of the 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from former prime minister Nuri al-Malikia to Prime Minister Haider al-Abadi.

The U.S. Department of State warns that travel within Iraq remains very dangerous and the ability of the U.S. Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq.

Severe human rights problems are widespread in Iraq. 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. Problems include harsh and life-threatening conditions in detention and prison facilities; arbitrary arrests and lengthy pretrial detention; limits on freedom of expression to include press, social, religious and political restrictions in academic and cultural matters; discrimination against and societal abuse of women and ethnic, religious, and racial minorities; seizure of property without due process and limitations of worker rights.

Findings of Fact

Applicant is a 47-year-old linguist who is an employee of a Department of Defense contractor since September 2016. He is currently stationed overseas. He is applying for a security clearance. He became a U.S. citizen in 2000. He has some college credits. He met and married his wife in 1997 in Iraq. She resides with him in the United States and is a naturalized U.S. citizen. They have three sons ages 16, 15, and 8. All of their children were born and raised in the United States. (Tr. 22-29; Gov 1) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

Foreign Influence

Applicant was born and raised in Iraq. In 1991, he fled to a refugee camp on the border of Iraq and Turkey in order to escape the bombing that was ordered by Saddam Hussain on the city where he and his family resided. While at the refugee camp. Applicant helped build a school and volunteered as a teacher. In 1993, he immigrated to the United States as a refugee. Applicant worked various jobs and took English

¹ Item 3 (Administrative Notice filing on Iraq and supporting documents)

courses. He became a U.S. citizen in 2000. Applicant has a U.S. passport, which he uses to travel outside the country. He has never had an Iraqi passport. (Tr. 22-29; Gov 1; AE A; AE B; AE D; AE E)

In 2004, Applicant became a linguist and cultural advisor for the U.S. Army. He helped with readiness training for soldiers who were deploying overseas. He obtained another full-time job with a bank in 2015, but still made himself available to the U.S. Army anytime they needed his service. Between 2005 to 2014, Applicant would take time off from his full-time job to assist with readiness training. In 2017, he learned the US Army was starting a peace-keeping mission in Syria. He decided to join the team because of his past experience and knowledge. He is currently deployed to Syria. He has worked for US. Armed Forces in Syria since July 2017. This is his first deployment. (Tr. 46-47; AE A)

The SOR raises security concerns because Applicant has family members who are citizens and reside in Iraq. SOR ¶ 1.a alleges Applicant's father is a citizen and resident of Iraq. He passed away in October 2017. This allegation is moot. SOR ¶ 1.a is found for Applicant. (Tr. 30, AE G) It was alleged Applicant's brother and two sisters were citizens and residents of Iraq. Applicant has only one sister who is a citizen and resident of Iraq. She is married and is a homemaker. A second sister recently moved to the U.S. and lives near Applicant's family with her husband. She is a U.S. permanent resident. One of his brothers is a citizen and resident of Sweden. When his father became ill, Applicant's brother returned to Iraq to care for him. After his passing, he returned to Sweden. Applicant also has two sisters who are citizens and residents of Norway and the United Kingdom respectively. (Tr. 30-31; AE K; AE P – AE R)

Applicant's wife was born in Iraq. She has lived in the U.S. since 1997 and is a U.S. citizen. She recently was awarded a cosmetology license and is currently looking for a job. His children were born and raised in the United States. They attend the local public schools in the area where Applicant resides. Applicant has no assets in Iraq. All of his assets are in the United States. He and his wife purchased a house in the U.S. They put \$40,000 down on the home when they purchased it. The last time they visited Iraq was in 2012. (Tr. 36-37; 42-44; Gov 1; AE M; AE N)

Applicant's parents-in-law were citizens and resided in Iraq. They immigrated to the United States in March 2018 and are permanent residents of the United States. (Tr. 40; AE J; AE L) Applicant has a brother-in-law and three sisters-in-law who are citizens and residents of Iraq. He currently has no contact with them. He is not sure what they do. He is not aware if his wife has any contact with her siblings in Iraq. The last time they saw them was during their 2012 visit to Iraq. (Tr. 32-33, 40-42)

Applicant says it was a dream come true for him to come to live in the best country in the world. He is grateful that the U.S. liberated Iraq from Saddam Hussain's rule. He decided to help the U.S. Army as a way of saying thank you for liberating Iraq. For the last 24 years he has lived in the United States. He values the freedom and opportunities he has been given and would like to continue to serve his country. (AE A)

Whole-person Factors

A Captain M.F., United States Army, wrote a letter on Applicant's behalf in October 2017. He had only worked with Applicant for the past two months, but described Applicant as "a trustworthy and valuable asset to our team." Applicant volunteered to go on every mission to insure mission success. He demonstrates a high level of skill in bridging the communication barrier between local nationals and U.S. forces. Captain M.F. has deployed multiple times and has worked with numerous translators. He considers Applicant to be among the best translators. (AE C)

The Company Sergeant Major recommends Applicant for a security clearance. He states that Applicant: "demonstrates the core values in all that he does and displays the ideals of integrity, honesty and candor beyond reproach." He says Applicant has served selflessly as a tactical linguist. A valued member of the organization, he is the preferred linguist for the Commanders.(AE I)

In April 2018, Captain J.F., United States Marine Corps, gave Applicant a letter of appreciation for his service from November 2017 to March 2018. Applicant provided outstanding linguist services at an "austere operating base." During each mission, Applicant successfully provided linguist support during very dynamic and intense events. Applicant's service was instrumental in the success of the mission. (AE I) Captain S.H, United States Marine Corps, states Applicant has his admiration and respect. He states Applicant will be an essential asset to any team or organization he works with in the future. (AE O)

Over the years, Applicant received numerous letters of appreciation for his work as a linguist and cultural advisor from 2004 to 2017. (AE C; AE H)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), the entire process is a 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 access for national security eligibility will be resolved in favor of the national security." In reaching this

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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 (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

GUIDELINE B: Foreign Influence

AG ¶ 6 explains the Government’s concern under Foreign Influence:

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 lists conditions that could raise a security concern and may be disqualifying. The following are applicable to Applicant’s case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or

resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. 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, 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant's sister, brother-in-law, and three sisters-in-law are citizens of and reside in Iraq. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Iraq's serious human rights problems, and its issues with terrorism. The government of Iraq has made some progress, but a heightened risk remains. Applicant's family in Iraq also create a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information. The security concerns regarding Applicant's father, brother, another sister and his parents-in-law do not apply because his father has unfortunately passed away and the other mentioned relatives no longer reside in Iraq. His sister and his parents-in-law have moved to the United States and are permanent residents of the United States.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b). The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. The following mitigating conditions potentially apply:

(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; and

(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.

I find AG ¶ 8(a) and AG ¶ 8(b) apply to Applicant's case. By virtue of familial relationships, it is clear that Applicant has an obligation to his relatives and in-laws in Iraq. However, Applicant is not close to his siblings-in-law. He has not been in contact with his sister, his sisters-in-law and brother-in-law in Iraq since 2012. The people he cares about the most, his wife and children, are citizens and reside in the United States. It is unlikely Applicant will have to choose between the interests of his relatives in Iraq and the interests of the United States. I note that there is no longer a security concern concerning Applicant's brother, one of his sisters, and his parents-in-law because they no longer reside in Iraq. His sister and his parents-in-law currently reside in the U.S. and are permanent residents. His brother is a citizen and resident of Sweden.

AG ¶ 8(b) applies because Applicant has deep and longstanding ties in the United States. Applicant has lived in the United States since 1993. He became a U.S. citizen in 2000. The people Applicant is closest to - his wife and three children - are citizens of and reside in the United States. His children were born and raised in the United States and attend U.S. schools. His parents-in-law recently moved to the U.S. Since 2004, he has worked as linguist/cultural advisor getting American troops ready for deployment to the Middle East. While deployed to Syria, he has worked alongside U.S. forces under austere combat conditions. In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I considered Applicant's longstanding commitment to the United States as well as his favorable contributions to national security. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable. The security concerns under Foreign Influence 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 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.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's gratitude to the U.S. government for accepting him as a refugee and his support of U.S. forces both state-side and now at a deployed location. Applicant has lived in the U.S. since 1993. He became a U.S. citizen in 2000. His immediate family lives with him and are also U.S. citizens.

I considered the reference letters and certificates of appreciation indicating Applicant's outstanding record as a linguist working on sensitive projects that were vital to U.S. national security. He received high praise from several U.S. military officers and a non-commissioned officer who attest to his dedication to the mission as well as his trustworthiness. The foreign influence security concerns are mitigated.

Formal Findings

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

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a -1.d:

For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge