



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-02959  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2018

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. Applicant mitigated the security concern raised by his contacts to Iraq. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on December 22, 2016. This document is commonly known as a security clearance application. On September 29, 2017, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.<sup>1</sup> It detailed the factual reasons for

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In

the action under the security guideline known as Guideline B for foreign influence. Applicant answered the SOR on November 29, 2017, and requested a decision based on the written record without a hearing.

On February 26, 2018, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on March 6, 2018. He was given thirty days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on April 8, 2018. Applicant's response to the FORM was received by the Defense Office of Hearings and Appeals (DOHA) on May 3, 2018. The case was assigned to me on June 13, 2018.

### **Procedural Matters**

Included in the FORM were 6 items of evidence, which are marked as Government Exhibits (GE) 1 through 4 and are admitted without objection.<sup>3</sup> Applicant's response to the FORM included 19 exhibits, which are marked as Applicant's Exhibits (AE) A through S and are admitted without objection.

### **Findings of Fact**

Applicant is 31 years old and was born in Iraq in October 1986. He is a high school graduate who has completed some college credits. Applicant has never married and has no children.<sup>4</sup> From January 2006 until April 2007, he was employed by a defense contractor and was attached to a U.S. Special Forces unit in Iraq as a linguist. After his stint as a linguist, Applicant worked as a carpenter in Turkey until November 2008. From November 2008, he did part-time work as a translator for police stations in Turkey.

After a brief period of unemployment, Applicant came to the United States under a refugee assistance program in June 2010, where he worked in retail businesses while preparing for the naturalization tests, which he passed. He became a naturalized U.S. citizen in June 2015. In April 2016, he successfully completed state correctional officer training and worked in that position until December 2016. Since December 2016, he has been employed as a linguist by a defense contractor and has been attached to a U.S. Special Operations unit in another Middle Eastern country (not Iraq) where U.S. coalition forces are fighting terrorists.<sup>5</sup>

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addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here.

<sup>2</sup> The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which documents are identified as evidentiary exhibits in this decision.

<sup>3</sup> Items 1 and 2 are the SOR and Applicant's Answer, respectively. They are the pleadings in this case and, therefore, are not marked as exhibits. An Administrative Notice for Iraq was not listed as an item of evidence, but it was attached and is marked as GE 4.

<sup>4</sup> GE 1; GE 2.

<sup>5</sup> GE 1; GE 2; AE A.

Under Guideline B, the SOR alleges that: (1) Applicant's parents are citizens and residents of Iraq; (2) Applicant's two brothers are citizens and residents of Iraq and that one of his brothers is an Iraqi police officer, and (3) Applicant's two sisters-in-law are citizens and residents of Iraq.<sup>6</sup> Applicant admitted the allegations with explanations.<sup>7</sup>

Applicant's response to the FORM fleshed out the details about his family in Iraq. His mother (age 63) is a hair stylist and also takes care of his father (age 72), who has a heart condition that forced him to retire as a cab driver. Applicant speaks to his parents by phone about every two weeks.

Applicant's brother (age 39) is a laborer who sells vehicles and manages family rental property. His older brother (age 41) is a driver for the Iraqi police, but he is not an officer and does not hold any rank. He conducts general driving duties. Applicant speaks to his brothers about semi-annually. Applicant does not have frequent contact with his sisters-in-law, both of whom are homemakers with no outside employment. Other than the brother who drives for the police, none of applicant's relatives have any current or past connections to the Iraqi government or military. Applicant has never disclosed to his family his job with a defense contractor or his job locations.<sup>8</sup> He has no property interests in Iraq.<sup>9</sup>

Just before Applicant graduated from high school in about 2004, Iraq was liberated (May 2003). Applicant signed up as an interpreter for U.S. forces in January 2006. During his more than one year as an interpreter for U.S. Special Forces (until April 2007), Applicant received numerous death threats from terrorists, threats that his command believed to be credible. Applicant left the country so as not to jeopardize his life or the lives of the soldiers he supported. His long-term plan, however, was to come to the United States, ultimately become a U.S. citizen, and return to serve as an interpreter. Applicant accomplished those goals. He came to the United States in June 2010, under a refugee assistance program. Applicant became naturalized U.S. citizen in June 2015 and returned to the battlefield as an interpreter for coalition forces in December 2016, where he serves currently (at least as of May 3, 2018, the date of his response to the FORM).<sup>10</sup>

In his response to the FORM, Applicant submitted seven character letters from soldiers who served with him during his deployment in Iraq (January 2006-April 2007) or

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<sup>6</sup> SOR ¶¶ 1.a-1.e.

<sup>7</sup> Answer, pp. 2-3.

<sup>8</sup> AE A, pp. 1-2.

<sup>9</sup> GE 1.

<sup>10</sup> Answer, pp. 1-2; GE 2; AE A. In taking his current employment with a defense contractor, Applicant surrendered his Iraqi passport. AE C.

during his current deployment (2017-2018).<sup>11</sup> The following are pertinent excerpts from those letters.

A retired Army Staff Sergeant served with Applicant in 2006-2007 and wrote the following: Other interpreters “said [Applicant] was the best, even though his English was lacking.” He was “trustworthy . . . and didn’t complain.” Applicant “became the Commander’s go-to interpreter . . . for important situations.” At one point during a mission, “[Applicant] was in full uniform including ski mask [to hide his identity from locals] but the [local] he was speaking to . . . clearly said his name.” “This was reported to . . . leadership.” Applicant was “offered a transfer, but he would not abandon his platoon . . . .”<sup>12</sup>

An officer who was Applicant’s Platoon Leader wrote in 2007: “[Applicant] always maintained his composure and professionalism even after his platoon was attacked with Improvised Explosive Devices (IEDs), RPGs, and Small Arms Fire on numerous occasions . . . The Soldiers in [his] Platoon trust him with their lives . . . .”<sup>13</sup>

Applicant’s Commanding Officer during his current deployment wrote: “[Applicant] performed exceptionally well as both a linguist and member of our team . . . As the Headquarters linguist, he was often called upon in the middle of the night to translate messages . . . He always did this cheerfully . . . .”<sup>14</sup>

Applicant’s Team Sergeant during his current deployment wrote: “[Applicant] regularly placed himself in danger in order to accomplish his mission . . . His efforts and talents were crucial to the accomplishment of the mission . . . .”<sup>15</sup>

Another one of Applicant’s Commanding Officers during his current deployment wrote: “[Applicant] performed exceptionally well as a team member despite operating in an austere environment . . . Through his dedication, competence, and selflessness, [Applicant] became a trusted advisor and friend.”<sup>16</sup>

An officer in Applicant’s unit during his current deployment wrote: “[Applicant] never shied away from the danger, but deliberately placed himself in harm’s way to enable our Soldiers to communicate . . . .”<sup>17</sup>

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<sup>11</sup> AE B, D, E-I.

<sup>12</sup> AE B.

<sup>13</sup> AE D.

<sup>14</sup> AE E.

<sup>15</sup> AE F.

<sup>16</sup> AE G.

<sup>17</sup> AE H.

Another officer in Applicant's unit during his current deployment wrote: "[Applicant] often speaks of his love for the United States . . . He considers himself an American first, above all else . . . I have no doubts in his commitment and loyalty to the United States."<sup>18</sup>

When Applicant entered the United States in June 2010, he lived with a family of one of the soldiers he served with in Iraq. The following is from the mother of that soldier: "I first met [Applicant] in 2010 as he stepped off a plane, arriving . . . from Turkey. My son worked closely with [Applicant] in Iraq . . . [Applicant] moved in with our family and quickly became a son I could rely upon . . . I saw him organize his plan for becoming a U.S. citizen. I saw him study each day to continually raise the level of his understanding of English. He landed a job, and soon worked his way up to management . . . I know [Applicant] to be honest, dependable, and hard-working."<sup>19</sup>

In his answer to the SOR and in his response to the FORM, Applicant averred that he would never compromise national security, not even in circumstances where his family faced threats by terrorists. He would report the incident to his commanding officer.<sup>20</sup>

I take administrative notice of the following facts concerning Iraq: Iraq faces many challenges fueled by sectarian and ethnic divisions. Numerous terrorist groups and elements hostile to the United States remain active in Iraq. Iraqi forces, with the assistance of the United States, have seen successes recently and most of the territory previously held by the Islamic State of Iraq and Syria (ISIL) has been retaken. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all but essential travel to Iraq should be avoided. Although the government of Iraq has made significant progress in its campaign to retake occupied territory from ISIL, there remains a security vacuum in parts of Iraq.

The State Department warns that anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by means of improvised explosive devices occur frequently in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators, 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 often take place in public venues such as cafes and markets.

The U.S. government considers the potential personal security threats to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. All U.S. Government employees under the authority of the U.S. Chief of Mission must follow strict safety and security procedures when traveling outside the Embassy and Consulates.

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<sup>18</sup> AE I.

<sup>19</sup> AE J.

<sup>20</sup> Answer, p. 3; AE A, p. 6.

In its annual human rights report, the U.S. Department of State reported that ISIL committed the overwhelming number of serious human rights abuses, including attacks against civilians, especially Shia but also Sunnis who opposed ISIL, members of other religious and ethnic minorities, women, and children. ISIL members committed acts of violence on a mass scale, including killing by suicide bombings, improvised explosive devices, execution-style shootings, public beheadings, and other forms of executions. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the Iraqi government's authority and worsened effective human rights protections.<sup>21</sup>

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>22</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>23</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>24</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>25</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>26</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>27</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>28</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>29</sup>

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<sup>21</sup> GE 4.

<sup>22</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>23</sup> 484 U.S. at 531.

<sup>24</sup> Directive, ¶ 3.2.

<sup>25</sup> Directive, ¶ 3.2.

<sup>26</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>27</sup> Directive, ¶ E3.1.14.

<sup>28</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>29</sup> Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>30</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>31</sup>

## **Discussion**

### **Guideline B - Foreign Influence**

The foreign influence security concern is explained at 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.<sup>32</sup>

An individual is not automatically disqualified from holding a security clearance because they have connections and contacts in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence-gathering history of that government; the country's human rights record; and other pertinent factors.<sup>33</sup>

The United States and Iraq are allies in the war against ISIL and other terrorists and insurgents. The serious security threat posed by these terrorists and other elements hostile to the United States must be taken into account in assessing the security concerns raised by Applicant's family members in Iraq. Applicant's relationship to his foreign relatives, coupled with the facts administratively noticed, raise a heightened security concern.

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<sup>30</sup> *Egan*, 484 U.S. at 531.

<sup>31</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>32</sup> ISCR Case No. 09-07565 at 3 (App. Bd. Jul. 12, 2012) ("As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, such as the foreign residence of an applicant's close relatives.") (internal citation omitted).

<sup>33</sup> ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

In assessing the security concern raised by Applicant's foreign contacts and interests, I have considered the following disqualifying conditions under AG ¶ 7, and mitigating conditions under AG ¶ 8:

AG ¶ 7(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;

AG ¶ 7(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;

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(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.

An individual with family members and other connections in a foreign country faces a high, but not insurmountable, hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted access to classified information."<sup>34</sup> What factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.<sup>35</sup>

In the present case, Applicant's parents, two brothers, and two sisters-in-law are admittedly citizens and residents of Iraq. Facts admitted by an applicant in an answer to

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<sup>34</sup> ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

<sup>35</sup> ISCR Case No. 11-12202 at 5 (App. Bd. Jun. 23, 2014).



a SOR require no further proof by the Government.<sup>36</sup> Therefore, AG ¶¶ 7(a) and (b) apply. The next inquiry is whether the security concern is mitigated.

Applicant signed up as an interpreter for U.S. and coalition forces in Iraq in January 2006, when he was 20 years old. He was attached to a U.S. Special Forces unit of the U.S. Army. Applicant served in that capacity for over a year. During that time, he earned the respect of the soldiers he served. Applicant was described as exceptionally professional and trustworthy. He was the subject of credible death threats but declined a transfer so as not to abandon his platoon. Applicant maintained his professionalism and composure even in the face of hostile fire. He placed himself in harm's way so his soldiers could continue to communicate. His loyalty to the U.S. troops has been manifestly shown, even before Applicant became a United States citizen.

After finishing his tour in Iraq as a linguist, Applicant made his way to the United States in 2010 under a refugee assistance program. He found employment, studied to become a United States citizen, and was embraced by his sponsor family like a son. Applicant was described by that family as honest, dependable, and hard-working. He became a U.S. citizen in June 2015.

By December 2016, Applicant had returned to the Middle East as an Army linguist. He is still serving there as of May 2018. Character letters from soldiers he is currently serving with echo the same esteem as soldiers expressed about Applicant's first tour. For present purposes, perhaps none sums it up as aptly as an officer in Applicant's current unit: "[Applicant] considers himself an American first, above all else . . . I have no doubts in his commitment to the United States."

Applicant has plainly chosen to make his allegiance to the United States, not Iraq. He has proven his loyalty in dangerous and high risk circumstance, by credible declarations of soldiers who served with him in Iraq and in his current deployment. The Appeal Board has recognized that in a case such as this, an Applicant's credibility is enhanced by that kind of service.<sup>37</sup> Applicant has no property interests in Iraq. He has never told family members that he works for a defense contractor or where his job locations are. AG ¶¶ 8(a) and (b) apply.

Applicant talks by phone to his parents about twice a month, usually to check on his father's medical condition. He speaks to his two brothers about twice yearly. He does not have frequent communications with his two sisters-in-law. Applicant's eldest brother works for the Iraqi police force but is not an officer and holds no rank; he does general

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<sup>36</sup> ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings").

<sup>37</sup> See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008); ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006).

driving duties. Other than that brother, Applicant's family members have no current or past connections to the Iraqi government or the military. AG ¶ 8(c) applies.

The evidence on Applicant's family ties to Iraq does not raise doubts about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>38</sup> Accordingly, I conclude that Applicant has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline B: For Applicant

Subparagraphs 1.a-1.e: For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge

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<sup>38</sup> AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).