



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



In the matter of:

ISCR Case No. 17-03009

Applicant for Security Clearance

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

09/26/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns arising from family connections in Iraq and from a federal tax lien. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

History of Case

On February 23, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 19, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing on November 3, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on January 26, 2018. DOHA issued a Notice of Hearing on March 14, 2018, setting the hearing for April 19, 2018. On April 6, 2018, DOHA issued an Amended Notice of Hearing, rescheduling the case to April 16, 2018. On that date, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified and offered Exhibits (AE) A through C into evidence. All exhibits were admitted without objection, except GE 2.¹ I granted Applicant's request to leave the record open until June 4, 2018, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on April 25, 2018. I extended that deadline for submission of post-hearing documents to June 25, 2018. He submitted post-hearing exhibits that I marked as AE D through AE J and admitted without objection. On July 12, 2018, and August 31, 2018, Applicant submitted two additional exhibits. Department Counsel had no objections and I marked them as AE K and AE L. They are admitted.

Procedural Ruling

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. These documents are included in the record. (Tr. 21-23) 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 51 years old. He was born in Iraq. He attended high school there and graduated with a bachelor's degree from an Iraqi university in 1990. After graduation from the university, he was conscripted into the Iraqi army for two years. He then owned and operated a retail business for several years. (Tr. 23-27, 50)

Foreign Influence

The SOR alleged security concerns are based on Applicant's four brothers, three sisters, an aunt, and two nephews, who are citizens and residents of Iraq. It also alleged a concern based on Appellant's friendship with a citizen of Egypt.

In November 2000, Applicant fled Iraq after being tortured by the Saddam regime because he could not convince his father to support the government. At the time, he had

¹ GE 2 is Applicant's Counterintelligence-focused Security Screening report, dated February 14, 2017. Applicant stated he had not reviewed this document although it had been timely sent to him by Department Counsel. I instructed Applicant to review the document more carefully after the hearing and file any corrections or objections to the exhibit by the close of the record. I stated that I would consider them in my final decision. Applicant did not submit any post-hearing submissions listing corrections or objections to the exhibit. (Tr. 15-18) GE 2 is admitted.

a wife and four children. Before fleeing, he took his family to live with cousins in southern Iraq, and then he went to Syria. In July 2002, he obtained a refugee visa and moved to the United States. One of his brothers had previously obtained refugee status here after being tortured in Iraq. (Tr. 27-28; GE 2) Applicant has not spoken to that brother since 2007. (Tr. 56)

After arriving in the United States in 2002, Applicant worked in a warehouse until September 2007, when he obtained a linguist position with a defense contractor and returned to Iraq. He did not see any of his relatives during this deployment. (Tr. 28-31; GE 2)

Applicant returned to the United States from Iraq in April 2008, and then became a naturalized citizen. In May 2008, he obtained a security clearance. In August 2008, he returned to Iraq as a higher level linguist with a different defense contractor. He remained there until September 2009. He did not visit family members living in Iraq during this deployment. (Tr. 58; GE 2)

From the end of his deployment in 2009 to sometime in 2013, Applicant was unemployed. He spent his time managing his U.S. investments and traveling to other Middle Eastern countries, looking for business opportunities. In September 2009, he moved to Egypt and rented an apartment. While there, he had a serious accident and broke both legs. (Tr. 34) He subsequently developed a relationship with a caretaker. He communicates with her twice a year over the internet. (Tr. 65, 71; GE 1, GE 5)

In September 2010, Applicant left Egypt and returned to Iraq for a visit with the intention of moving his wife and children to Egypt. At that time, he learned that his wife and sons had been executed by the Saddam regime after he fled Iraq. His surviving family members had kept that information from him for years. He remained in Iraq until July 2011. He then traveled to and visited surrounding countries. (GE 1, GE 2)

In May 2013, Applicant established residency and opened a business in another Middle Eastern country. In January 2016, he closed this business because of the region's instability and returned to the United States. He supported himself with earnings from his closed business and financial help from friends. (Tr. 68; GE 2, GE 5)

In 2017, Applicant obtained a position as a linguist and cultural advisor with another defense contractor and went to two Middle Eastern countries, which are U.S. allies. He was working and living on a military base in one of those countries until a week before his hearing date. He returned to that country after this hearing. (Tr. 69-72)

Applicant's parents were born and raised in Iraq. Both are deceased. His father was executed by the Saddam regime. He had five brothers, one of whom was also executed by the Saddam regime in 1979. One brother is a citizen and resident of the United States. The other three brothers are citizens and residents of Iraq. His oldest brother is retired. Applicant spoke to him a month ago by telephone, but generally only

speaks to him once a year at the holidays. He has not spoken to his other two brothers in Iraq for years. One of them suffers from serious medical issues. (Tr. 45-50)

Applicant had three sisters. One of them is deceased. The other two are citizens and residents of Iraq. Both are widows and have adult children. He does not speak to them often. He spoke to one sister about six months ago. He spoke to the other sister three years ago. He has two nephews, who are citizens and residents of Iraq. He has not spoken to them for two or three years. (Tr. 52-53) His aunt, who was a citizen and resident of Iraq, died in 2017. (Tr. 51)

Applicant sent about \$16,000 to four siblings living in Iraq over a seven-year period to help with living expenses. After Applicant's mother died, his brother purchased Applicant's inheritance share of their family residence. His siblings continue to own it. (GE 2)

Applicant said he consistently places his life in jeopardy while working in Iraq at a specific location, and seemingly during his work in other countries. (Tr. 59) He intentionally does not tell his family that he works for the U.S. forces while he is in Iraq because it would be dangerous for them and could create a potential risk to their lives. Nor does he visit them while in Iraq. To his knowledge, none of them have been threatened by terrorists. (Tr. 32-33, 52, 76-77)

Financial Considerations

The SOR alleged that Applicant owed the Internal Revenue Service (IRS) \$25,457 for a lien that that was filed against him in January 2012.

Applicant became aware of the tax lien during a September 2017 background interview with a government investigator. He denied that he owed the IRS the alleged amount of taxes for 2009. He said he owed \$4,438 for unpaid interest and penalties for that year. On the day of his hearing, he sent a check to the IRS by certified mail. He said he was unable to pay the debt sooner because he had not been stateside and did not have enough money until recently. (Tr. 33-44)

The tax lien related to Applicant's earnings for 2009. In 2008, he began investing in the stock market while working as a translator. He invested about \$400,000 in the market, some of which he had earned as a translator. The rest of these funds were received as a settlement from the U.S. Government for his wrongful arrest at a border. His income for 2009 was \$960,000, and included his salary and investment earnings. He said he paid \$225,000 in income taxes for that year in 2010 while he was in his home state. It is unclear if he filed tax returns for tax years 2010 and subsequent years, although his income greatly decreased. His accountant told him he did not have a tax filing requirement for years 2015, 2016, and 2017, because he lacked sufficient income for those years. He stated he does not owe the IRS additional money for any years. (Tr. 33-44; GE 5; Answer; AE A, AE B, AE G, AE H)

Applicant has a bank account in the United States. He currently has about \$17,000 in it. He does not have assets in any foreign country. When he is not working in the Middle East, he lives with close friends in the United States, some of whom he has known since he first arrived here in 2002. He does not own a home, but intends to purchase one in the future. The only money he earns now is his salary. He lost his stock investments while he was in Egypt in 2010 and was unable to manage his portfolio due to his accident. He has no delinquent debts. (Tr. 70-75)

Character References

Applicant submitted letters of recommendation. His current platoon leader states that he and his soldiers feel confident and secure while serving in Iraq as a result of Applicant's diligence and superior performance. (AE E) Another platoon leader with whom Applicant worked in 2018 stated that Applicant is a loyal and hardworking member of his team. (AE E) A soldier, who currently works with Applicant in another country, stated that he has no reason to question Applicant's loyalty and commitment to the mission they are performing. (AE D) Two friends, who have known Applicant for several years, consider him honest and trustworthy. (AE I, AE J)

Applicant submitted a letter of recommendation from a lawyer who has known him for 15 years. During that time, he represented Applicant in meetings with an investigative agency for the U.S. Government. Applicant provided valuable information to that agency about the post-invasion location of the headquarters of the former Iraqi regime. The lawyer attested to Applicant's honesty, loyalty, and commitment to the United States. (AE F)

Iraq

I have taken administrative notice of facts contained in U.S. Government pronouncements 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 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.) The Department Counsel did not request administrative notice of any facts pertinent to the country of Egypt.

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. Two 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; 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.

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 familial connections with three brothers, two sisters, and two nephews, who are residents and citizens of Iraq. 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. Applicant's relationships with his relatives also create 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 and Applicant's admissions are sufficient to raise both disqualifying conditions, as to the allegations in SOR ¶¶ 1.a, 1.b, and 1.d, relating to his family members. SOR ¶ 1.c involved Applicant's aunt, whose 2017 death eliminated any potential security concerns.

Applicant's connections to a friend, who is a citizen and resident of Egypt, raise a security concern under AG ¶ 7(b). This relationship could create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help his former caretaker living in Egypt.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts of this case:

(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; and

(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.

Applicant established compelling mitigation under AG ¶¶ 8(a), 8(b), and 8(c). Applicant does not have frequent contact with his five siblings and two nephews, who are resident citizens of Iraq. He has not visited Iraq since he left in 2011. He is also acutely aware that interaction with family members, while working as a linguist for U.S. troops, could subject them to harm from terrorists. Thus, he avoids interacting with them frequently, and it is apparent he is not emotionally close to his siblings or nephews. His communication with his Egyptian friend is infrequent and via the internet. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." In 2002, he immigrated to the United States, and in 2008, he became a U.S. citizen. He has one brother, who is a U.S. citizen and resident. Applicant worked here for several years before obtaining a linguist position. He earned a substantial amount of money through his U.S. investments. His only financial assets are in the United States. He has established several long-term friendships since his arrival to the United States.

Applicant's four years of support to the DoD as a linguist and cultural advisor, including the dangers that his service entails, weigh heavily toward mitigating security concerns. Applicant is currently serving in a Middle Eastern ally country, providing critical assistance to U.S. forces. He is cognizant of the dangerous situations where he works, both in Iraq and in his current position. He has shown his patriotism, loyalty, and fidelity

to the United States during his years of support to the DoD while serving in Iraq and surrounding countries.

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline lists several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant was unable or unwilling to timely pay his entire 2009 Federal income tax debt, resulting in an IRS tax lien being filed in 2012. This evidence establishes the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

counseling service, and there are clear indications that the problem is being resolved or is under control; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The tax lien was filed in 2012, about six years ago, and relates to Applicant's 2009 taxes. He paid the majority of the taxes due in 2010, but not all that was due. Consequently, he owed interest and penalties for the unpaid amount. He recently resolved the debt with the IRS and paid it. He obtained professional advice and resolved his tax issues. The evidence established some mitigation under AG ¶ 20(a) and AG ¶ 20(c). In April 2018, Applicant resolved the alleged \$25,457 tax lien with a payment of \$4,438 that represented unpaid interest and penalties for 2009 tax year. The evidence establishes mitigation under AG ¶ 20(g).

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 have incorporated my comments under Guidelines B and F in my whole-person analysis.

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 family circumstances that are normal and outside his control.

There is strong persuasive mitigating evidence weighing in favor of granting Applicant a security clearance. He is a mature and intelligent person, who arrived in the United States in 2002 as a refugee, having been tortured in Iraq by the Saddam regime. His father, brother, wife, and four sons were executed by that regime. One of his brothers

lives in the United States. He cooperated with a U.S. investigative agency by providing important information about the former Iraqi regime. He became a naturalized citizen in 2008. He has infrequent contact with his siblings and nephews living in Iraq, and his friend in Egypt. In his employment from 2007 through 2009, and from 2017 to the present, Applicant has provided direct support to the U.S. armed forces as a linguist and cultural advisor. 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. Applicant's current supervisor and other soldiers assess him as loyal, trustworthy, and responsible. His friends are impressed by his honesty and loyalty. He resolved his tax lien, which involved less than \$5,000 and resulted from unique circumstances more than eight years ago.

After weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant mitigated the security concerns pertaining to foreign influence and financial considerations. Overall, the record evidence leaves me without doubts as to Applicant's eligibility and suitability for a security clearance.

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.e: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

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

Shari Dam
Administrative Judge