



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-03443
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

04/09/2018

Decision

HOGAN, Erin C., Administrative Judge:

On October 19, 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 1, 2017, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 29, 2017. The case was assigned to me on January 5, 2017. On January 8, 2018, a Notice of Hearing was issued, scheduling the hearing for January 29, 2018. The hearing was held as scheduled. During the hearing, the Government offered two exhibits, which were admitted without objection as Government (Gov) Exhibits 1 and 2. Applicant offered 17 exhibits, which were admitted as Applicant Exhibits (AE) A – Q, without objection. The record was held open until February 12, 2018, to allow Applicant to submit additional documents. Applicant timely submitted one additional document which was admitted as AE R. The Government requested administrative notice be taken

of certain facts regarding the country of Iraq. The administrative notice document was marked as Item 3. The transcript was received on February 5, 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; arbitrary interference with privacy and homes; 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 32-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. Applicant was born in Iraq. Applicant has a bachelor's degree earned from a university in Iraq. In July 2009, he moved to United States after receiving a Special Immigrant Visa for his service supporting U.S. Coalition forces in Iraq. (Applicant states that he received refugee status.) He became a U.S. citizen on November 19, 2014. He recently married in December 2017. His wife is also a naturalized U.S. citizen. They have no children. (Tr. 14-15, 19-20; Gov 1; Gov 2; AE B; AE J; AE Q) (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. He is the youngest of four children – all boys. When he was 16, Applicant and his family worked at a small U.S. Army base as

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

contractors. He later worked for a cargo contractor at Baghdad International Airport supporting the coalition forces in Iraq. He left his job to complete his college degree. After graduating college, he worked as an interpreter directly supporting the U.S. Army in Iraq for 14 months. He then applied for a special immigrant visa and asylum/ refugee status. After the visa was approved, Applicant moved to the United States. He worked several jobs in the U.S. before becoming a U.S. citizen in 2014. Applicant has a U.S. passport, which he uses to travel outside the country. On April 28, 2015, he renounced Iraqi citizenship and no longer has an Iraqi passport. (Tr. 22-23, 34 - 36, 53; Gov 1; AE B; AE C; AE F; AE G)

Two of Applicant's brothers are naturalized citizens and reside in the United States. One brother is a linguist for a local hospital. His other brother is currently deployed as a linguist supporting U.S. forces overseas and holds a security clearance. (Tr. 16-17; AE K) Applicant's wife was born in Iraq. She has been a U.S. citizen for two years. All of her family reside in the United States. (Tr. 31)

Applicant's parents and his oldest brother are citizens of and reside in Iraq. His father is 72 and his mother is 65. Both are retired. He used to call his parents every two weeks. He now has limited contact with them because he works at deployed locations with limited communications. He spoke to his brother and parents in Iraq between two to three times over the past year. Since moving to the U.S. in 2009, he traveled to Iraq only once in 2016 when his mother was hospitalized. He hopes to sponsor his parents and brother so that they can immigrate to the United States. Currently, the Department of Immigration has a huge visa backlog. They are waiting for their visas to be approved. (Tr. 17-20, 25 -26, 29-30; AE G; AE H; AE I) Applicant's oldest brother owns a beauty supply shop. He is married with two children, ages 11 and five. If he is allowed to immigrate to the United States, he intends to bring his family with him. (Tr. 36-37)

Applicant has no bank accounts in Iraq. All of his bank accounts are located in the United States. He does not send money to his family in Iraq. His parents own three parcels of land in Iraq. Applicant estimates the value at \$750,000. His parents intend to sell the properties when they move to the United States. (Tr. 20-21, 31; AE M; AE N)

Applicant's family, his parents and brothers, have worked directly for coalition forces in Iraq since 2003. In 2005, his family was threatened because of their work in support of U.S. forces. They received two threats within a few months of each other. They relocated to a different area of the country. They received no threats after being relocated. Applicant and his family would never do anything to harm the United States. (Tr. 24, 27-28, 33-35)

Applicant is very proud of his current job as a linguist/culture adviser in support of U.S. troops during operation Inherent Resolve. Becoming a U.S. citizen was the best day of his life. In the future, he plans to study for a master's degree in cybersecurity. He and his wife hope to start a family. (AE B)

Whole-person Factors

A USAF Lieutenant Colonel wrote a letter on Applicant's behalf. He worked with Applicant from November 2016 to March 2017 in Iraq. He describes Applicant's dedication as an interpreter/translator as admirable. Applicant was critical in relaying information between USAF Air Advisors and Iraqi Security Forces. His skill set and work ethic is highly desired in any professional capacity. His dedication to his duties garnered respect and admiration from the combined US/Iraqi staff. (AE A)

Mr. H., the regional manager of the cargo company Applicant worked for at Baghdad International Airport, worked with Applicant between November 2005 and November 2007. Applicant served as the head of the Administration Department. He describes Applicant as a talented individual who has proven success in the workplace. Applicant's unique skill set of computer skills, leadership, customer service and database management made him a highly valued employee in the organization. Applicant left the company on good terms to pursue his educational goals. He indicated that Applicant and his family were threatened by anti-Coalition and anti-Iraqi government individuals because of his work for the pro-western company. (AE A at 2)

Major J.H. served alongside Applicant for over seven months in 2016 in support of a military operation in Iraq. He describes Applicant's dedication and support to the mission as exceptional. Applicant played a critical role in the Combined Joint Operations Center. He built a strong rapport and became part of the team while serving as an interpreter earning the trust of both parties. His efforts greatly enhanced cooperation and success on the battlefield. He also educated U.S. forces on Iraqi culture, customs, and courtesies. Applicant always put the mission first and did everything possible to ensure the team's success. He was entrusted with an enormous amount of mission critical information. His contributions insured operational effectiveness. (AE A at 3)

Captain B. worked with Applicant from December 2016 to April 2017. Applicant helped ensure that combat operations were synchronized and enabled a shared understanding across a geographically dispersed Brigade Combat Team operating in austere conditions. He would not hesitate to work with Applicant again in a combat environment in support of U.S. national security objectives. (AE A at 4) Captain D. worked with Applicant in 2009. Captain D. states Applicant has proven himself reliable on combat patrols and skillful in translating between U.S. and Iraqi forces. He notes Applicant endured many hardships and dangers as a result of his work with the U.S. Army. He received numerous letters threatening harm to him and his family due to his work with coalition forces. Applicant is one of the most competent and trustworthy interpreters currently working with U.S. forces. (AE A at 5)

MSgt A. worked side by side with Applicant from December 2016 to June 2017. He also attests to Applicant's reliability and trustworthiness. (AE A at 6) Applicant also received several letters of appreciation for his work as an interpreter. (AE K; AE P)

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 parents and brother are citizens and residents of 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 contacts with his 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 Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b) as a result of Applicant's admissions and evidence presented. 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. It is clear that Applicant has ties of affection and obligation to his parents and brother in Iraq. However, it is unlikely Applicant will have to choose between the interests of his relatives in Iraq and the interests of the United States. Applicant and his family were previously threatened because of their work for U.S. forces. He did not compromise sensitive information at that time. He is unlikely to be motivated to do so at present. His family moved to a safer region in Iraq.

AG ¶ 8(b) applies because Applicant has deep and longstanding ties in the United States. Applicant has lived in the United States since 2009. He became a U.S. citizen in 2014. Applicant's wife and two of his brothers are citizens of and reside in the United States. One of his brothers is serving as an interpreter at a deployed location and has a security clearance. Applicant as well as his family have worked in support of U.S. forces since 2003. 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 and his family supported U.S. Coalition forces in Iraq since 2003 at risk to their safety. Applicant has lived in the United States since July 2009. He became a U.S. citizen in 2014. He currently serves as an interpreter in a deployed location. His wife is a naturalized U.S. citizen who lives in the United States. He is sponsoring his parents and his brother's immigration to the United States.

I considered 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

Subparagraph 1.a: 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