



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



In the matter of:)
)
) ISCR Case No. 17-03981
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On December 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 30, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and it was received by Applicant on February 21, 2018. He was afforded an opportunity to file objections and submit material

in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 9. Applicant did not provide a response to the FORM or object to the Government's evidence. Items 1 through 9 are admitted into evidence. The case was assigned to me on June 11, 2018.

Request for Administrative Notice

In the FORM, Department Counsel submitted Items 10 and 11, which requested that I take administrative notice of certain facts about the countries of Egypt and Iraq. Applicant did not object, and I have taken administrative notice of the facts contained in the requests that are supported by source documents from official U.S. Government publications and those that were provided with the FORM. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted both of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He was born in Iraq. He graduated from high school in Iraq in 2004. He attended college in the United States, but did not earn a degree. He has never married and has no children. He has worked for federal contractors in the past.¹

Applicant's father is a citizen of Iraq and resides in Egypt. His father was employed as a high level official with the Iraqi Intelligence Service. In 2006, Applicant's father and family were threatened by insurgents in Iraq. Applicant, his mother, and four siblings fled Iraq to Syria, where they were refugees. Applicant worked as a cashier in Syria to support his family. He and his family were interviewed by the International Organization for Migration, which sponsored them in 2009 to move to the United States. Applicant's mother remains an Iraqi citizen, but resides in the United States as a permanent resident. She resides with Applicant. Applicant became a naturalized U.S. citizen in 2016. His four siblings reside in the United States. Two are U.S. citizens, and the other two remain Iraqi citizens, residing in the U.S.

Applicant completed a Questionnaire for Public Trust Position (SF 85) on August 21, 2010. In it he disclosed that his father lived in Jordan. Applicant completed a Counter-Intelligence Screening Questionnaire (CISQ) on August 28, 2010. In it he again disclosed his father lived in Jordan and had worked for the Iraqi Intelligence Service from 1983 until 2008. Applicant did not know what his father did for the Iraqi Intelligence Service. He disclosed that his father did not go to Syria with his family and did not come to the United States. When interviewed at the time, he could not explain why his father did not accompany his family to Syria.²

¹ Item 7.

² Items 3, 4.

In December 2016, Applicant completed another CISQ and subsequent interview. Applicant explained his father did not accompany the family to Syria because his father was missing. He did not disclose this during his earlier interview. Applicant also provided different accounts of the length of his father's service with the Iraqi Intelligence Service. In his 2010 interview, Applicant disclosed his father stopped working for Iraqi Intelligence in 2008, and his father was living in Jordan as a tile-worker. In his 2016 CIS investigation, he told the investigator that in approximately June 2010, his mother received word from family members that his father was living in Egypt. Applicant also said that his father worked with the Iraqi Intelligence Service until November 2010. On his November 2016 security clearance application (SCA), Applicant stated that his father left his job with the Iraqi government in November 2010. In his answer to the SOR, Applicant stated that his father remained in Iraq with the Iraqi Intelligence Services until he received threats. Applicant said that on October 3, 2010, his father left Iraq for Egypt. During his December 2016 interview he stated he did not know if his father received any pension from the Iraqi government. In his answer to the SOR, he said his father did not submit a resignation from his Iraqi job and lost his pension. Applicant stated in his answer that he did not have any information about his father's job and what his responsibilities and duties were while a member of the Iraqi Intelligence Service.³

During Applicant's August 2010 CIS interview, he told the investigator that in 2010 his father applied for refugee status to come to the United States and his mother submitted an application for a green card for his father. During his 2016 CIS interview, he told the investigator that he submitted the paperwork to sponsor his father to come to the United States during the same time. He said that the paperwork was approved, but due to the Arab Spring uprising and turmoil in Egypt, his father has been unable to leave.⁴

In 2012, Applicant and his brother began sending money to their father in Egypt. They sent monthly payments of \$500 or \$750 for his father's rent and living expenses. Applicant said he stopped sending money to his father after he started working for the U.S. Army in June 2017. His two brothers and sister are now supporting their father. He estimated he sent about \$30,000. During his December 2016 CIS interview, Applicant said he had refiled the paperwork in November 2016 for his father to move to the United States. Applicant maintains weekly telephonic contact with his father. His mother who lives with him also has regular contact by telephone with Applicant's father in Egypt.⁵

Iraq⁶

The United States Department of State warns that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence and to avoid all travel to Iraq. The ability of

³ Items 2, 4, 6, 7, 9.

⁴ Items 4, 9.

⁵ Items 2, 7, 9.

⁶ Item 11.

the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is extremely limited given the security environment. The Islamic State of Iraq and Syria (ISIS) controls a significant portion of Iraq's territory. Within areas under ISIS control, the Iraqi government has little or no ability to control and ensure public safety.

Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks.

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.

There are significant human rights problems in Iraq to include: sectarian hostility, widespread corruption, lack of transparency at all levels of government and society that have weakened the government's authority and worsened effective human rights protections. Iraqi security forces and members of the Federal Police have committed human rights violations to include killing, kidnapping, and extorting civilians. ISIS is also responsible for human rights abuses. There are also problems that include harsh and life-threatening conditions in detention and prison facilities, arbitrary arrest and lengthy pretrial detainment, denial of fair public trial, limits on freedom of expression, freedom of the press, censorship of religion, limits on peaceful assembly, and societal abuses of women.

Egypt⁷

The United States Department of State warns U.S. citizens of threats from terrorist groups in Egypt and to consider the risks of travel to the country. U.S. citizens have been kidnapped and murdered by terrorist and extremist groups. Several terrorist groups, including ISIS, have committed multiple deadly attacks in Egypt, targeting government officials, security forces, public venues, tourist sites, civil aviation and other modes of public transportation, along with diplomatic facilities. U.S. citizens remain at risk as ISIS uses kidnapping for ransom to finance their operations. Due to security concerns, U.S. diplomatic personnel are prohibited from travel to parts of Egypt and U.S. citizens are warned to avoid those areas.

Extremist organizations operate in Egypt and ISIS has called on supporters to attack U.S. citizens and coalition partners. ISIS media has threatened that places associated with Westerners, Christians, the Egyptian military and police, and Egyptian government facilities could be struck at any time. Authorities believe there is continued likelihood of such potential attacks. These terrorist groups use conventional and nonconventional weapons to target U.S. Government interests and private interest.

⁷ Item 10.

Political protests occur without warning throughout Egypt and have led to violent clashes between police and protestors resulting in death, injuries, and property damage.

Egypt's human rights problems involve the excessive use of force by security forces, including unlawful killings and torture; and deficiencies in due process, including excessive use of preventive custody and pretrial detention, use of military courts to try civilians, trials of hundreds of defendants in which authorities did not present evidence on an individual basis, suppression of civil liberties, including societal and government restrictions on freedom of expression, the press, and peaceful assemble and association. There are also problems with arbitrary arrests; a politically motivated judiciary; restrictions on academic freedom; impunity for security forces; limits on religious freedom; and violence, harassment, and societal discrimination against women and girls.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to 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 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(e) require evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The United States Department of State warns U.S. citizens against travel to Iraq and Egypt because of continued instability and threats by terrorist organizations against U.S. citizens. There are serious concerns in both countries about terrorist activities that target Westerners and Americans. Extremists associated with various terrorist groups including ISIS are active throughout both countries. The State Department’s reports on human rights for Iraq and Egypt notes there are widespread problems involving lack of due process; restrictions on individual freedoms; violence against women and girls; killings; kidnapping; and extorting civilians. ISIS is also responsible for human rights abuses.

Applicant’s father is a citizen of Iraq and resident of Egypt. He was employed in a high level job with the Iraq Intelligence Service. Applicant could not provide specific information about the nature and details of his father’s job. Applicant provided financial support for his father from 2012 until 2017. He maintains weekly telephonic contact with him. Applicant’s mother, who lives with him, also has regular telephonic contact with her husband. Applicant’s relationship with his father creates a heightened risk and a potential foreign influence concern. AG ¶¶ 7(a), 7(b), and 7(e) apply.

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:

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

- (a) the nature of the relationship 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 and interests of the U.S.;
- (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 interests in favor of the U.S. interests; 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 financially supported his father for several years. He and his mother maintain weekly contact with his father in Egypt. Applicant has applied for his father to immigrate to the United States. Applicant's relationship with his father is more than casual and his contacts with him are frequent. AG ¶ 8(c) does not apply.

Applicant's father served with the Iraqi Intelligence Service from at least 1983 until 2010. Applicant gave conflicting information about his father's term of service and his whereabouts, or continued connections with the Iraqi government. Applicant indicated that his family fled to Syria because they were threatened, but his father did not accompany them. He did not know why. He then said his father was missing. There is insufficient information about Applicant's father, his job, and potential continued connections in the intelligence field. There is also inconsistent information about where Applicant's father was living during different periods of time, be it Jordan, Iraq, or Egypt. I cannot find that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his father and the interests of the United States. This risk is significantly greater because his father's career in the Iraqi Intelligence Service and because the threats he received from insurgents. AG ¶ 8(a) does not apply.

Applicant has been a U.S. citizen since 2016. He is single. His mother lives with him and is a permanent resident of the United States. In the past, he provided financial support for his father. His siblings are now providing this support. Both Iraq and Egypt continue to have significant terrorist activity that specifically targets Americans. Applicant's father has already experienced threats from insurgents when he was in Iraq. Applicant has a close relationship with his father. It is too great of a burden to expect him to be loyal to the interests of the United States and resolve any conflicts in favor of the United States over those of his father. AG ¶ 8(b) does not apply.

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 the 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 32 years old and has been a naturalized U.S. citizen since 2016. He has a strong family tie to his father who is a citizen of Iraq and resides in Egypt. There are too many unknown facts about Applicant's father's position in the Intelligence Service to know the extent that his position could create a vulnerability to foreign influence and exploitation. It is too great a burden to expect Applicant to resolve a conflict of interest in favor of the United States instead of his father. The heightened risk raised by Applicant's father in Egypt continues to raise security concerns under Guideline B, foreign influence, and are unmitigated. The record evidence leaves me with questions and 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraphs 1.a-1.b: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge