



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 07-11727

Appearances

For Government: Braden Murphy, Esquire, Department Counsel

For Applicant: Isho Lilou, Personal Representative

October 7, 2008

Decision

HOWE, Philip S., Administrative Judge:

On March 1, 2005, Applicant submitted his Security Clearance Application (SF 86). On December 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B (Foreign Influence) and E (Personal Conduct). The action was 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 13, 2008. He supplemented that Answer on March 19, 2008, and requested a hearing before an administrative judge. DOHA received the request on March 24, 2008. Department Counsel was prepared to proceed on April 17, 2008. Another administrative judge received the case assignment on April 22, 2008. DOHA reassigned the case to me on June 3, 2008,

based on caseloads. DOHA issued a Notice of Hearing on June 10, 2007, setting the hearing for July 3, 2008. It was continued until July 21, 2008, and an Amended Notice of Hearing was sent June 26, 2008. I convened the hearing as scheduled on July 21, 2008. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified, and had no exhibits. DOHA received the transcript of the hearing (Tr.) on July 30, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel disclosed he would not submit any evidence on the Guideline E allegation and was withdrawing it from consideration. Applicant had no objection to the withdrawal of the allegation, and I granted the motion to withdraw. (Tr. 7)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq (Tr. at 10-12.) The request and the attached documents were admitted into evidence as Exhibit 4. (Tr. 16) The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer and the supplemental Answer to the SOR, Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 45 years old, married and the parent of three children (18, 14, and 13 years of age). Applicant was born in Iraq, served in the Iraq Army from 1985 to 1991, as he was required to do under Iraq law at that time, and immigrated in 1992 as a refugee from the Saddam Hussein regime, the previous Iraqi government. Applicant traveled with his wife and daughter from Iraq to Turkey. He remained there for seven months, and then was able to come to the United States. His oldest child was born in Iraq, and is now a naturalized U.S. citizen. Applicant and his wife also became naturalized U.S. citizens in 1999. His younger two children were born in the United States. Applicant owns his house, and has no assets of any type outside the United States. He and his wife are employed in the United States. At times, Applicant worked two jobs while his wife remained at home to care for their children. Applicant currently makes \$14 an hour as a machine operator, and his wife is a store cashier. (Tr. 23, 28-32, 34-38, 62, 63; Exhibits 1 and 3)

Applicant's father died in 1991. His mother, an Iraqi citizen, lives in northern Iraq, and is 72 years old. His parents had eight children, all born in Iraq. One sister died in a

terrorist car bombing, one brother lives in the United States, three brothers live in northern Iraq, one brother immigrated to Turkey in 2008, and one sister also lives in northern Iraq. Applicant's family is ethnic Assyrian and Christian in a Muslim country. Applicant spoke with his mother in April 2008 after his surgery. Previously, he spoke with her in December 2007. One brother who is disabled lives with his mother, and Applicant speaks with him about every six months. The brother, who immigrated to the United States, has a "green card" as a resident alien. He works in Iraq as a translator for the U.S. forces.. His oldest sister works as a secretary for an oil company in Iraq and has since 1972. Applicant last saw her 18 years ago. Another brother works as a welder for an Iraqi oil company. Applicant last saw him 18 years ago. The third brother who departed Iraq in March 2008 to live in Turkey has no contact with Applicant. A fourth brother operates a coffee shop in Northern Iraq, and did some work in the past for the Assyrian Democratic Movement (ADM), an Iraqi political party. He does not work for the party now, and is only a member. He wants to immigrate to the United States. Applicant last spoke with him in April 2008. Applicant's father was arrested by the Hussein regime in 1985 because of his Assyrian ethnicity, and one brother also was arrested in 1996 by the Hussein regime. His four brothers served in the Iraqi Army as was required under the Hussein government. (Tr. 40-53; Exhibits 1-3)

Applicant fled Iraq in 1992 after helping the opponents of the Hussein regime. As a civilian in Iraq, Applicant was educated and worked as a pharmacy assistant. The Hussein regime attempted to force all (about 500,000 people) Assyrians to become Muslims. He has not returned to Iraq since leaving it in 1992. Applicant does not have a security clearance, and has never had one in the United States. He seeks a security clearance so that he can work as a translator for a Government contractor. Applicant speaks five languages, including English. Applicant will keep secret U.S. classified information while working as a translator. He testified credibly and persuasively that he wants to help the United States, because when he needed help the United States gave him a place to live, citizenship, a steady income, and a home to own. He also wants to help all the Iraqi people enjoy a democratic society and clean up Iraq from the Hussein regime. He does not want to help only the Assyrian people who live in Iraq. (Tr. 29, 61-63, 71, 78)

Applicant sent money, \$100, in March 2005 to his brother because his brother needed financial help at the time when the economy was poor in Iraq. Applicant has not donated money to the ADM. The ADM chairman was a friend of Applicant's father in the 1970s and 1980s. Applicant was not his friend, and had not met the ADM chairman. Applicant was present at two public events this chairman attended in the United States in 2004 and 2005, along with hundreds or thousands of other people at those two functions. Applicant had no association with the ADM chairman at those events. Applicant voted in the January 2005 Iraqi election while in the United States, as allowed by the U.S. Government, to form the Iraqi Transitional Government. In December 2005, he voted in the legislative elections for the new Iraqi Parliament, casting his vote for the ADM candidate. (Tr. 65-71; Exhibits 1-4)

I take administrative notice of the following facts: Iraq is a Middle Eastern country with 27 million people. In 2003, The United States led a United Nations coalition to remove Saddam Hussein, a long-serving dictator, from power in Iraq. A parliamentary democracy was created pursuant to a new 2005 constitution. After free elections in 2006, Iraq's new government took office. The Parliament was elected for a four year term. Despite the elections and new government, Iraq had much violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings had targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Although the new governmental has taken aggressive action against terrorists, the threat of terrorism in Iraq remains high, as do human rights abuses. Terrorist groups conduct intelligence activities as effectively as state intelligence services. For the past 18 months, the large increase in U.S. combat troops in Iraq has substantially reduced violence. These troops were aided by Iraqi soldiers, and Sunni local forces that formerly supported the Al Qaeda insurrection. In Northern Iraq, the Kurdish local government and forces maintain a more peaceful environment for the residents than elsewhere in Iraq. (Exhibit 4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of 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. 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 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 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 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 pertaining to foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interest, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(a) contact 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;¹ and

¹ 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).

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

Applicant's mother, one sister, and three brothers are citizens and residents of Iraq. The other two brothers are citizens of Iraq, but do not live there. While Iraq struggles with the creation of a democracy, it is randomly victimized by terrorist attacks. This situation creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶ 7(a) and (b) have been raised by the evidence.

The Government produced substantial evidence of those two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. Two conditions that could mitigate the disqualifications are provided under 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

(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 the application of AG ¶ 8(b). Based on his relationship and depth of loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interests. In 1992, Applicant escaped from Iraq to avoid the Hussein regime, took his wife and child to Turkey and then to the United States. He and they became naturalized citizens in 1999. His two sons were born in the United States in the 1990s. He worked in the United States since his arrival, sometimes at two jobs, does not own any property in Iraq, but owns a home and has his money in the United States. He has not returned to Iraq since leaving it in 1992. He has not seen some of his siblings for 18 years. Some, he speaks to intermittently by telephone. He has not seen his mother for some years. Two of his brothers have also escaped from Iraq to live in the United States and one is trying to immigrate here from Turkey. His ties to the United States are much stronger than his ties to his siblings and elderly mother living in Iraq. His strongly expressed gratitude to the United States for giving him shelter and a peaceful life with his family is very persuasive to show his strong ties to the United States overcoming any residual attraction to his former country.

AG ¶ 8(c) has limited application to Applicant's relationships with his siblings, with whom he has infrequent communication, albeit he sent one of them \$100 in 2005 because of the economic situation in Iraq. Although there is a remote possibility that terrorists could attempt to coerce or threaten Applicant through his siblings, it is highly unlikely.

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(a):

(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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Four circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and human rights abuses in Iraq. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use his siblings and parent, who live in Iraq, to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States in 1991. He was born in Iraq and spent his formative years there. He was educated in Iraq in the field of pharmacy. Third, his parent and four siblings remain citizens and residents of Iraq. Fourth, he maintains some intermittent contact with his mother.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant is a mature person. He has lived in the United States for 16 years

and been a naturalized citizen for nine years. His sons were born here. He owns a house here. Out of his sense of love and dedication to the United States, he wants to work for a defense contractor as a linguist speaking five languages, including English. The other languages are very useful in the Middle East area. His brother, a U.S. resident alien, works as a translator for the U.S. forces in Iraq. Applicant takes his loyalty to the United States very seriously. After leaving Iraq in 1992, he has not returned. There is no evidence he has ever taken any action that could cause potential harm to the United States or would fail to abide by his employer's rules and regulations, or maintain necessary security of any classified information he might see as a translator. There is not any derogatory information about him concerning his work activities in the United States. Furthermore, his mother and siblings live in Northern Iraq, the area under Kurdish control. It is and has been more peaceful than other parts of Iraq. The ADM is a political party with representatives in the Iraqi national parliament. Applicant is not directly involved with the party, nor is his brother at the present time. Applicant is not personally acquainted with any ADM politician serving in the Iraqi government.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence.

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 to 1.i: For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge