



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



In the matter of:)
)
) ISCR Case No. 17-03265
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq. and Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

12/27/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to mitigate foreign influence and personal conduct security concerns relating to his connections to Iraq and his termination from his linguist position in Iraq for misconduct. Eligibility for access to classified information is denied.

History of the Case

On August 1, 2017, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On October 31, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under the foreign influence and personal conduct guidelines.

On January 20, 2018, and February 15, 2018, Applicant responded to the SOR and requested a hearing. (Hearing Exhibit (HE) 4) On April 25, 2018, Department Counsel was ready to proceed. On July 23, 2018, the case was assigned to me. On August 31, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 14, 2018. (HE 2) Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Tr. 9-10) Applicant's hearing was held as scheduled using video teleconference.

During the hearing, Department Counsel offered five exhibits; Applicant did not provide any documents; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 9, 13, 15; GE 1-5) On September 24, 2018, DOHA received a transcript of the hearing.

Procedural Ruling

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Iraq. Applicant did not object to me taking administrative notice of facts concerning Iraq, and I granted Department Counsel's motion. Department Counsel and Applicant indicated they had no objection to me taking administrative notice of facts from the U.S. Department of State website concerning Iraq.¹ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Portions of the Department Counsel's requests are quoted without quotation marks and footnotes in the Iraq sections of this decision, *infra*. The first two paragraphs and the last paragraph in the Iraq section are from the State Department website U.S. Relations with Iraq Fact Sheet, and the remainder, except for the last paragraph, is from Department Counsel's administrative notice request.

¹ The first two paragraphs in the Iraq section of this decision are from the U.S. Department of State website, "U.S. Relations With Iraq Fact Sheet," Bureau of Near Eastern Affairs (Apr. 28, 2017), <https://www.state.gov/r/pa/ei/bgn/6804.htm>. Statements about the United States' relationship with Iraq from the Department of State are admissible. See ISCR Case No. 02-00318 at 5 (App. Bd. Feb. 25, 2004).

Findings of Fact²

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.g, 1.i, and 2.a. (HE 4) He also provided mitigating information. (HE 4) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 38-year-old linguist, and DOD contractors have previously employed him for several years in Iraq. (Tr. 5, 20) In 1980, he was born in Iraq, and in 1997, he emigrated from Iraq to the United States. (Tr. 5, 17) In 1999, he graduated from high school in the United States, and he has not attended college. (Tr. 5) In 2007, he became a U.S. citizen. (Tr. 5) In 1996, he married, and in 1997, he divorced. (Tr. 6) In 2008, he married, and his children are ages two months, three years, and seven years. (Tr. 6) In 2013, his spouse became a U.S. citizen. (Tr. 48) His three children were born in the United States. (Tr. 22) He has not served in the United States or Iraqi military. (Tr. 7)

Applicant came to the United States as a refugee because his brother was working for the U.S. government. (Tr. 17) From January 2006 to April 2008, and from April 2009 to March 2011, he worked for the United States in Iraq as a linguist. (Tr. 17-18) He married in Iraq, and he and his spouse went to the United States in July 2008. (Tr. 19) His spouse spent about 12 months in Iraq with her family in the period from April 2009 to March 2011. (Tr. 19) From April 2012 to September 2013, Applicant and his family lived in Iraq, and Applicant worked for a private Iraqi company in security. (Tr. 20-21) From March to June 2015, Applicant worked in Iraq as a linguist. (Tr. 22) In 2017, Applicant, his wife, and children went to Iraq for a couple of months to visit family and friends. (Tr. 22, 47) He stayed with his mother. (Tr. 44)

Applicant's mother, father, three brothers, four sisters, mother-in-law, father-in-law, four brothers-in-law, and one sister-in-law are citizens and residents of Iraq. (Tr. 23-30; SOR response ¶¶ 1.a-1.h) His parents are divorced. (Tr. 23) His father served as an officer in the Iraqi military for about 11 years. (Tr. 23-24) His father is retired, and he receives rent from properties he owns. (Tr. 25) Applicant provided about \$10,000 to \$12,000 annually in financial support for his mother. (Tr. 23, 43) Now he provides about \$2,000 annually to her. (Tr. 45) He has acquaintances or his uncles deliver the funds to her in increments of about \$500. (Tr. 44) One of his brothers lives in the United States. (Tr. 25) Two of his brothers in Iraq are police officers. (Tr. 26) None of his other siblings or in-laws are employed by the Iraqi government. (Tr. 23-30) In the past he provided \$5,000 or \$6,000 in financial support to his siblings. (Tr. 48)

In 2008, Applicant purchased property in Iraq, and he values that property at about \$80,000. (Tr. 30, 50-51; SOR ¶ 1.i) Applicant's net worth in the United States including his equity in his house is about \$250,000. (Tr. 49) In addition to his spouse and three children, he has two uncles, one brother, and about 20 cousins living in the United States. (Tr. 52)

² The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Applicant communicates with his father, mother, and siblings on about a monthly basis. (Tr. 45-46) His spouse communicates with her family in Iraq on a daily or almost daily basis. (Tr. 46-47)

Personal Conduct

In May 2015, Applicant was terminated as a linguist from his employment for leaving his post or site without authorization. (Tr. 31; SOR response ¶ 2.a) Applicant believed he was not needed at his site, and he left to visit his spouse and children, who lived about 90 minutes away by car. (Tr. 32) He did not have permission to leave the site. (Tr. 32) He said a sergeant said he could do whatever he wanted to do because the cameras used for their mission were down. (Tr. 33) This was the first time he left a site in Iraq without permission. (Tr. 34) He believed that if he asked for permission, it would be refused. (Tr. 35) When he left in the afternoon, he intended to return early the next morning. (Tr. 35) About 9:30 PM, the battalion sergeant major from the site called Applicant and asked him to come back the night he left; however, Applicant waited until the next morning to return. (Tr. 36-38) Applicant said he did not remember anyone telling him he had to have permission to travel off-site for personal or unofficial reasons. (Tr. 41-42) Applicant conceded that he should have asked permission before leaving the site. (Tr. 38) He returned the next morning, and he was informed he was terminated from his employment. (Tr. 39)

The day Applicant left the site without permission, he called his wife about 1:00 PM, and he knew that she was released from the hospital where she was treated for stomach flu the night before he left the site. (Tr. 36, 52-53) Despite knowing his wife was not in the hospital and it was not a medical emergency, Applicant left the site about 3:00 PM without permission. (Tr. 32-38, 53)

Applicant's statement in the security incident report relating to his unauthorized departure from the site states that around 2:00 PM his sister-in-law called and said his "wife was rushed to the Emergency room so at that time I was really shocked and worried about my wife because that was the second time she had been hospitalized that same week." (GE 2) So he left the base so he "could go to the hospital to see [his] wife." (GE 2) He said he would not have left the site "if it wasn't an emergency." (GE 2) On January 20, 2018, he resubmitted the statement about his spouse's medical emergency as an attachment to a text indicating it described "exactly what happened." (SOR response)³

³ Applicant's SOR does not allege that Applicant made a false statement in response to the security incident report and SOR about his spouse being in the hospital for emergency treatment. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Applicant questioned the fairness of reporting the May 2015 security incident in security channels because he did “not breach[] any security or put anybody’s life in danger.” (Tr. 39) He admitted he made mistakes; however, he insisted that he would conscientiously protect security and classified information. (Tr. 57-58)

Iraq

The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. The December 2011 departure of U.S. troops from Iraq marked a milestone in our relationship as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now a key partner for the U.S. in the region as well as a voice of moderation and democracy in the Middle East. Iraq has functioning government institutions including an active legislature, is playing an increasingly constructive role in the region, and has a bright economic future as oil revenues surpass pre-Saddam production levels with continued rapid growth to come. The U.S. maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement.

The Strategic Framework Agreement (SFA) between Iraq and the U.S. provides the basis for the U.S.-Iraq bilateral relationship. It covers the range of bilateral issues including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment. Efforts to implement the SFA are overseen by the Higher Coordinating Committee and several Joint Coordination Committees, which meet periodically.

The U.S. State Department warns that U.S. citizens in Iraq are at high risk for violence and kidnapping, and advises U.S. citizens not to travel to Iraq. The current travel advisory level is Level 4: Do not travel.

The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is limited given the security environment. Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by improvised explosive devices (IED) occur in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators (EFPs), magnetic IEDs placed on vehicles, human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and shootings using various direct fire weapons. Such attacks may take place in public venues such as cafes and markets.

Iraq witnessed continued terrorist activity in 2016, primarily as a result of the actions of Islamic State of Iraq and Syria (ISIL). In 2016, ISIL remained the greatest terrorist threat globally, maintaining a formidable force in Syria, including a large number of foreign terrorist fighters. ISIL’s capacity and territorial control in Iraq has dramatically eroded in the past two years. According to estimates from the UN Assistance Mission

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). This conduct will not be considered except for the five purposes listed above.

for Iraq, acts of terrorism and violence killed more than 7,000 civilians and injured more than 12,000 in 2016. By the end of 2017, Iraqi Security Forces had liberated all territory from ISIL, drastically reducing ISIL's ability to commit abuses and atrocities. Human rights violations continue to be a problem with allegations of unlawful killings and other abuses being made against the Iraqi Security Forces and Popular Mobilization Forces.

In its annual human rights report, the U.S. Department of State reported that severe human rights problems were widespread. 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. Iraqi Security Forces, members of the Federal Police, and the Peshmerga committed some human rights violations, and there continued to be reports of Popular Mobilization Forces killing, torturing, kidnapping, and extorting civilians. ISIL committed the overwhelming majority of serious human rights abuses, including attacks against: civilians, (particularly Shia but also Sunnis who opposed ISIL); members of other religious and ethnic minorities; women; and children.

Observers also reported other significant human rights-related problems: harsh and life-threatening conditions in detention and prison facilities; arbitrary arrest and lengthy pretrial detention, denial of fair public trial; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; arbitrary interference with privacy and homes; child soldiers; limits on freedom of expression, including press freedoms; violence against and harassment of journalists; undue censorship; social, religious, and political restrictions in academic and cultural matters; limits on freedoms of peaceful assembly and association; limits on religious freedom due to violence by extremist groups; restrictions on freedom of movement; refugee and internally displaced persons (IDP) abuse; both forced IDP returns and preventing IDPs from returning home; discrimination against and societal abuse of women and ethnic, religious, and racial minorities, including exclusion from decision-making roles; trafficking in persons; societal discrimination and violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; seizure of property without due process; and limitations on worker rights.

The United States' extraordinary commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents and Iraq government problems developing and complying with the rule of law. A top national security goal of the United States is to establish relationships, cooperation, training, and support of the Iraq Government and military in the ongoing war against terrorism.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant

applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 has four conditions that could raise a security concern and may be disqualifying 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;
- (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; 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;
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant admitted that his mother, father, three brothers, four sisters, mother-in-law, father-in-law, four brothers-in-law, and one sister-in-law are citizens and residents of Iraq. In 2008, Applicant purchased property in Iraq, and that property is valued at about \$80,000.

Applicant has frequent contact with his family living in Iraq. Applicant and his spouse were born in Iraq, and she has frequent contact with her family in Iraq. His and his spouse's frequent contacts with relatives in Iraq are manifestations of their care and concern for relatives living in that country.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

There are widely documented safety issues for residents of Iraq primarily because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the DOD, and he is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in Iraq. Hundreds of United States and coalition armed forces and civilian contractors serving in Iraq are targets of terrorists, along with Iraqi civilians and soldiers who support the Iraqi government and cooperate with coalition forces.

The mere possession of close family ties with relatives living in Iraq is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person living in a foreign country, 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. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).⁴

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another significant consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law

⁴ In accordance with "well established DoD policy [Applicant and his family's] religious affiliation play[ed] no part" in this decision. ISCR Case No. 08-06795 at 6 n. 3 (App. Bd. May 25, 2012).

including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iraq with the United States, and the situation in that country places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in or visiting that country does not pose a trustworthiness or security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Iraq.⁵

Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iraq has a significant problem with terrorism. Applicant's family in Iraq "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with relatives who are living in Iraq or visiting that country create a potential conflict of interest because terrorists could place pressure on

⁵ The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

his family in Iraq in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s relationships with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(e), and 7(f) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The DOHA Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The

standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the mitigating conditions fully apply. Applicant presented some important mitigating information. Applicant has “deep and longstanding relationships and loyalties in the U.S.” Applicant resided in the United States since 1997, except when he was in Iraq.⁶ Applicant, his spouse, and his three children are citizens of the United States. He and his spouse swore an oath of allegiance to the United States as part of the citizenship process. He has property in the United States valued at about \$250,000. Most importantly, he served as a linguist in Iraq supporting U.S. goals in that country.

Applicant’s support to the DOD in Iraq as a linguist and cultural advisor, including the dangers that service entailed, weigh towards mitigating security concerns. Applicant seeks a security clearance to enable him to continue serving in Iraq providing critical assistance to U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States’ goals in Iraq. He has shown his patriotism, loyalty, and fidelity to the United States during his support to DOD while serving in Iraq.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant’s work in support of U.S. forces in Afghanistan occurred “in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.”) See *also* ISCR Case No. 04-12363 at 2

⁶ ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator’s multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant’s deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) (“there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest”); [Directive] ¶ 8(d) (“the foreign . . . activities are on U.S. Government business”); and [Directive] ¶ 8(f) (“the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.”)

Id. at 3 (internal footnotes omitted) (remanding administrative judge’s denial of security clearance).

(App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

Applicant's connections to Iraq are substantial and ongoing. He and his spouse have frequent contacts with their relatives, who are citizens and residents of Iraq. He provides financial support to his mother. From April 2012 to September 2013, Applicant and his family returned to Iraq, and Applicant worked for a private Iraqi company in security. When Applicant went to Iraq in 2015 to work as a linguist, he took his family with him, and he left his work site without permission resulting in termination of his employment as a translator. In 2017, he and his family went to Iraq for two months to visit family and friends. He retains property in Iraq that he values at about \$80,000.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Iraq. His and his spouse's families reside in Iraq. Like every other resident of Iraq, they are at risk from criminals, terrorists, and human rights violations of the Iraqi government.

It is important to be mindful of the United States' huge historical investment of manpower and money in Iraq, and Applicant has supported U.S. goals and objectives in Iraq. Applicant and his family living in Iraq are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in that country from lawless elements in Iraq.

In sum, Applicant's connections to his relatives living in Iraq are substantial. His connections to the United States taken together are insufficient to overcome the foreign influence security concerns under Guideline B.

Personal Conduct

AG ¶ 15 articulates the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 lists one personal conduct condition that could raise a security concern and may be disqualifying in this case including:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information,

supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior

In May 2015, Applicant was terminated as a linguist from his employment for leaving his post or site without authorization. Applicant admitted he did not ask for permission to leave because he believed his request would be denied. His violation of security protocols placed his own life at risk, and if U.S. or coalition forces needed to rescue him, their lives would also be at risk. His violation of security rules had the potential of placing his family in danger. AG ¶ 16(d) is established requiring additional inquiry about the possible applicability of mitigating conditions.

Four personal conduct mitigating conditions under AG ¶ 17 are potentially applicable in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the mitigating conditions apply. Applicant's violation of a security rule had the potential to endanger the lives of himself, his family, and coalition forces. If hostile forces captured Applicant, coalition forces may have been deployed to rescue him. His termination of employment as a linguist occurred because of his misconduct. His statement at his hearing that his spouse was not in the hospital conflicts with his statement made in response to the security inquiry and his response to the SOR. His violation of a security rule is recent, serious, and not 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 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines B and C are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 38-year-old linguist, and DOD contractors have previously employed him for several years in Iraq. In 1980, he was born in Iraq, and in 1997, he emigrated from Iraq to the United States. In 2007, he became a U.S. citizen. In 2013, his spouse became a U.S. citizen, and their three children were born in the United States. He and his spouse took the oath of allegiance to the United States when they became U.S. citizens. His employment and most of his assets are located in the United States.

Applicant served as a linguist, translator, or cultural advisor in Iraq. He made contributions at personal risk on behalf of U.S. combat forces in Iraq. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service as a linguist weighs heavily towards mitigating of foreign influence security concerns. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”).

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there.⁷ Iraq is a dangerous place because of violence from terrorists, and the Iraqi government does not respect the full spectrum of human rights. Terrorists continue to threaten the Iraqi government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The United States and Iraqi governments are allies in the war on terrorism.

⁷ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

Applicant and his spouse have frequent contact with their relatives in Iraq. Frequent contacts with family in foreign countries are a manifestation of one's care and concern for relatives living in those foreign countries. Applicant retains property in Iraq and provides financial support to his mother. His and his spouse's relationships with residents of Iraq raise important foreign influence security concerns. He left his work site without permission resulting in termination of his employment.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

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 through 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge