



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



In the matter of:)
)
) ISCR Case No. 18-01607
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
Chris Morin, Esq., Department Counsel

For Applicant: Eric A. Eisen, Esq.

05/07/2019

Decision

Curry, Marc, Administrative Judge:

Applicant mitigated the foreign influence security concerns generated by his family members who are citizens and residents of Iraq. Clearance is granted.

Statement of the Case

On July 13, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017. The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue his security clearance. It recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On August 28, 2018, Applicant responded to the SOR, admitting all of the allegations, and requested a hearing. The case was assigned to me on December 1, 2018. On January 17, 2019, DOHA issued a notice of hearing, scheduling the case for March 4, 2019. The hearing was held as scheduled. At the hearing, Department Counsel submitted three documents for admission that I marked as Government Exhibits (GEs) 1 through 3. Applicant submitted 13 exhibits, incorporated into the record as Applicant's Exhibits (AE) 1 through 13.

I took administrative notice, at Department Counsel's request, of the facts encapsulated within seven source documents, identified as Hearing Exhibits (HE) I through HE VII. Also, I received a copy of the discovery letter mailed from Department Counsel to Applicant, incorporating it into the record as HE VIII. The transcript was received on February 26, 2019.

Findings of Fact

Applicant is a 39-year-old single man. He was born, raised, and educated through high school, in Iraq, immigrating to the United States in 2010, and becoming a naturalized U.S. citizen in 2015. (Tr. 31) He earned an associate's degree in database management in 2017. (Tr. 42)

Between 2003 and 2010, while living in Iraq, Applicant worked for a defense subcontractor that provided supplies to the U.S. forces. (Tr. 30) According to his team leader, he was "an ideal employee as well as an intelligent and hard-working individual." (AE E)

In 2010, Applicant applied for, and was granted, a special immigration visa to immigrate to the United States after someone in his community in Iraq discovered that he was supporting the United States mission, leading to death threats. (Tr. 31) After immigrating to the United States, Applicant worked a variety of jobs before returning to the defense field and taking a job supporting U.S. military advisors as an Arabic role player in 2017. (AE F) According to his supervisor, his training was instrumental to the program, as his "ability to think quickly and . . . grasp . . . the cultural nuances frequently encountered . . . made him an invaluable asset to the team." (AE F) Per a coworker, Applicant is dependable, duty-driven, and honest." (AE D) He was the most popular trainer on base, as his "innate knowledge and native language skills facilitated the training scenarios and significantly enhanced the realism of the pre-deployment training . . . conducted for thousands of . . . security forces annually." (AE D) According to the senior program manager, Applicant "demonstrated a dedication to duty and an ability to be trusted in all circumstances." (AE C)

In July 2018, Applicant began working for his current employer. He is a linguist, working on location abroad. (Tr. 52) According to the site lead, "he is the type of employee that every manager wants to have," and his "professionalism has directly contributed to the success of the synergy between the Coalition forces and their Iraqi

counterparts.” (AE H) In February 2019, Applicant received a certificate of recognition for his outstanding service as a linguist in the field. (AE K)

Applicant is equally well-respected in his community. A friend characterizes him as “a selfless person who believes in helping others in need [regardless] of race, origin, or religion. (AE J)

Applicant’s parents are citizens and residents of Iraq. (Answer at 1) They are tailors. (GE 1 at 27) Applicant communicates with his mother by phone approximately once every month, and they communicate on a family online chatroom app approximate three days per week. (Tr. 41, 68) Applicant’s father is “old school,” and prefers not to use a cell phone often. (Tr. 67) Moreover, they “do not get along very well.” They talk on occasion when Applicant calls his mother, and she gives his father the phone to say hello. (Tr. 68) In 2016, Applicant gifted them \$6,000. (Tr. 89)

Applicant’s brother is a citizen and resident of Iraq. He works in an Iraqi law enforcement unit analogous to a SWAT team, handling hostage rescue and interdiction, together with other counter-terrorism activities. (Tr. 34) He was hired and trained for this position by the U.S. provisional government in 2007. (Tr. 33) For his first three years on the job, he was under U.S. government supervision. (Tr. 34) Recently, he transferred positions within the police force, and now provides marksmanship training to Iraqi army members. (Tr. 34) Applicant has not spoken to his brother since the summer of 2018. (Tr. 77) They had “a falling out,” over a family-related matter. (Tr. 77) Previously, they spoke approximately twice per week. (GE 3 at 1)

Applicant has two younger sisters. The youngest sister helps her husband, Applicant’s brother-in-law, operate a carpenter shop. (Tr. 36) Applicant’s next-youngest sister operates a business with her husband, Applicant’s other brother-in-law, involving online product marketing. (Tr. 80; GE 2 at 5) Before starting this business, Applicant’s brother-in-law was a police officer. (Tr. 80) He and Applicant’s sister started the business as a part-time endeavor. After it began thriving in 2017, Applicant’s brother-in-law quit his job with the police department to focus exclusively on the online marketing business. (Tr. 80)

Applicant and his youngest sister communicate by text daily, and he communicates by text with his other sister two to three times per week. (GE 2 at 5) Periodically, his sisters post pictures of their children, or their favorite recipes on the family chat room. (Tr. 41) Applicant last traveled to Iraq to visit his family members in 2014. (Tr. 61) He has not seen them since he has been working there.

Applicant owns no property in Iraq. (Tr. 54) He has \$30,000 deposited in a U.S. checking account, and \$15,000 invested in a 401k retirement account. (Tr. 55, 57) He plans to buy a home, and rent it so long as he is working overseas, then move into it once he returns. (Tr. 47-48)

Administrative Notice

Iraq is a constitutional parliamentary republic. (HE I at 1) Although the Iraqi government has made impressive gains over the years towards curbing terrorism, significant problems remain, as the Islamic State of Iraq and Levant (ISIL) continues to exert influence in parts of the country. (HE VII at 3) The U.S. Embassy warns that U.S. citizens are at high risk for kidnapping and violence and to avoid all but essential travel to Iraq. (Item II at 1) The U.S. government considers the potential threat to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. (HE III at 2)

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.

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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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.” (AG ¶ 6) The following disqualifying conditions are potentially applicable under AG ¶ 7:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

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

Applicant has not visited his family members in Iraq in five years. Conversely, he communicates with them frequently through text messaging and social media, and has provided significant financial support to his parents over the years. Moreover, although Applicant is currently not talking to his brother, they have not been out of touch long enough to be considered estranged. I conclude AG ¶¶ 7(a) and 7(b) apply.

Applicant has a history of supporting U.S. interests under dangerous conditions, beginning in 2003, when he took a job with a contractor to help provide supplies to the U.S. – led coalition forces in Iraq. He immigrated to the United States after his security was compromised, in 2010. Since living in the United States, he continued to demonstrate his commitment to U.S. objectives, working as a role player in military training exercises. Despite leaving Iraq in fear for his life in 2010, he returned in 2018 to help coalition forces on the ground, working as a translator, where he has performed excellently. Under these circumstances, I conclude AG ¶ 8(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 nominal, 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,” applies. I conclude Applicant has mitigated the foreign influence security concern.

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.

In reaching this decision, I was particularly cognizant of Applicant's stellar employment and character references.

Formal Finding

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
Subparagraphs 1.a – 1.e:	For Applicant

Conclusion

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

Marc Curry
Administrative Judge