



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



In the matter of: )  
)  
) ISCR Case No. 18-02916  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*  
**09/11/2019**

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised by his foreign family members. Eligibility for access to classified information is denied.

**History of Case**

Applicant submitted a security clearance application (SCA) on August 1, 2017. On January 9, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence). Applicant answered the SOR on March 8, 2019, and requested a hearing before an administrative judge (Answer). At that time, he was represented by counsel. On March 12, 2019, Applicant, through counsel, submitted an amended answer to the SOR (Amended Answer). On May 14, 2019, Applicant's counsel withdrew his representation of Applicant.

I was assigned to the case on June 27, 2019, and I issued an order to both parties to produce their documentary evidence by July 22, 2019. On July 8, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 6, 2019. I convened the hearing as scheduled. Government's Exhibits (GE) 1 through 6 and Applicant's Exhibits (AE) A through E, were admitted without objection,

and Applicant testified. I received the hearing transcript (Tr.) on August 2019, and the record closed.

### **Administrative Notice**

I took administrative notice of facts concerning Iraq. Those facts are set forth in the Government's Request for Administrative Notice for Iraq, marked as HE I. These documents are included in the record. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant is 62 years old, and he was born in Iraq. In 1985, Applicant received bachelor's degrees in medicine and surgery from a Pakistani university. In 1989, he received a medical degree from an Iraqi university, and he received a master's degree in forensic medicine and pathology in 1991 from an Iraqi university. He married his wife in 1988, and they have two adult daughters. In 1997, he fled the Saddam Hussein regime and entered the United States through Turkey. Applicant, his wife, and children were naturalized in 2010. (Tr. 13-15, 22-26; GE 1; AE B)

Applicant has been working in Jordan for a defense contractor since approximately February 2018 as a category I linguist and interpreter. He requires a clearance to become a category II linguist. This is his second security clearance application. He previously applied for a security clearance in 2011, but his sponsor lost the government contract, and there was no final determination regarding his clearance eligibility. (Tr. 12-13, 27-30, 34; GE 1)

From 1985 until 1997, Applicant worked for the Iraqi Ministry of Health as a forensic-medicine and general-practice physician. He fled Iraq due to threats from Saddam Hussein's government. Three months after he entered the United States illegally, Applicant applied for political asylum. (Tr. 14, 22-26; GE 2 at 7; GE 3 at 1-2; GE 4 at 5)

Applicant worked on behalf of defense contractors as a medical advisor and a medical translator in Iraq during the following periods: August 2006 to February 2007; March 2007 to November 2007; December 2007 to June 2008; February 2008 to May 2009; October 2010 to June 2011; and July 2011 to November 2011. While working in Iraq he was in combat areas and subject to indirect fire. Applicant has not returned to Iraq for personal reasons since he left in 1997, and he has not visited Iraq for any reason since 2011. (Tr. 29-33, 39; GE 4 at 33-41)

Three of Applicant's four siblings are citizens and residents of Iraq. Additionally, he has a brother who is a citizen of Iraq and a resident of Lebanon. During his August 2017 interview, Applicant reported that he was estranged from his siblings because his family does not accept his wife. While he was working in Iraq between 2006 and 2011, he saw only one of his siblings (Brother A). (Tr. 34; GE 2 at 7; GE 3 at 2)

Brother A has been serving in the Iraqi military since 1983. He is a two-star general responsible for coordinating the movement of Iraqi and U.S. forces. While Applicant was working in Iraq, he worked with Brother A once every one or two months. Brother A is aware that Applicant has been a linguist and translator for the U.S. military. Applicant testified that his contact with Brother A, while he was in Iraq, was only related to their military service and solely professional in nature. Applicant has not seen Brother A since he left Iraq in 2011, and he has only communicated with him one time during a telephone call in 2014. Applicant testified that he no longer gets along with Brother A to explain their lack of communication for the past five years. (Tr. 39, 47-51, 62-63; GE 2 at 8; GE 4 at 14, 16-17, 45, 50)

Applicant's Sister A and her husband are citizens and residents of Iraq. He last saw her in 1997, and until 2014 he spoke to her two times a year via telephone. His last contact with her was in 2014. Sister A is a housewife, her husband is a cargo shipper, and neither she nor her husband have an affiliation with the Iraqi government. (Tr. 53-55; GE 2 at 8-9; GE 4 at 47)

Applicant's Sister B and her husband are citizens and residents of Iraq. She is employed by the Iraqi Ministry of Education as an art professor, and her husband is an appliance dealer. Applicant last saw her in 1997, and he stopped communicating with her in 2011. (Tr. 55-57; GE 2 at 9; GE 4 at 47)

Applicant's Sister C is now a citizen and resident of the United States. Her husband is a citizen of Iraq, and he moved from Lebanon to Iraq in 2017. He currently works with Sister B's husband in his appliance store. (Tr. 57-60; GE 2 at 9; GE 4 at 45, 47)

Applicant's wife, daughters, son-in-law, and two granddaughters are all citizens and residents of the United States. His mother and two of his sisters are also residents of the United States. Since 2017, Applicant has managed the eight rental properties that his wife owns outright. Applicant and his wife have approximately 50% equity in their personal home, which is worth about \$700,000. He estimates that the collective equity in the rental houses and their home is \$1,000,000. They have approximately \$45,000 in their savings and checking accounts. Applicant testified that he is involved in his community, and he is loyal to the United States. (Tr. 17-18, 26-27, 36-38, 41)

Applicant provided certificates of appreciation and letters of recommendation. He is described as professional and dedicated. His level of medical and language expertise was considered invaluable to the training of troops and the detection of detainee abuse. Additionally, he submitted documents reflecting his completion of various DOD training in: antiterrorism; threat awareness; cyber awareness; information assurance; and joint staff operations security. (AE A; AE C; AE E)

## **Iraq**

Iraq is a constitutional parliamentary republic. The outcome of the 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from former Prime Minister Nouri al-Maliki to Prime Minister Haider al-Abadi. (HE I)

The U.S. Department of State warns that travel within Iraq remains very dangerous and the ability of the U.S. Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. (HE I)

Severe human rights problems are widespread in Iraq. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections. Problems include harsh and life-threatening conditions in detention and prison facilities; arbitrary arrests and lengthy pretrial detention; limits on freedom of expression to include press, social, religious and political restrictions in academic and cultural matters; discrimination against and societal abuse of women and ethnic, religious, and racial minorities; seizure of property without due process and limitations of worker rights. (HE I)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2, describing 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.”

According to 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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.

The guideline includes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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; 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.

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, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has ongoing familial connections with his three siblings and their families. Although his contact with these individuals has decreased over time, these relationships create a heightened risk of foreign pressure or attempted exploitation because of the risk of terrorism. The evidence and Applicant's admissions are sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The guideline includes several conditions that could mitigate security concerns under AG ¶ 8. The following are potentially applicable in this case:

(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; 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's ties to the United States are substantial. His wife, children, grandchildren, mother, and two sisters are citizens and residents of the United States. He has significant financial assets and resources in the United States. Applicant testified that he is a loyal citizen and his contact with his siblings and in-laws in Iraq is minimal. Applicant receives partial mitigation under AG ¶ 8(b) and 8(c).

Applicant's brother's position as two-star general in the Iraqi army, creates the potential for a conflict of interest. The instability and risk of terrorism in Iraq present an unacceptable risk that Applicant may be placed in a position of having to choose between the interests of a foreign individual, group, or government and the interests of the United States. Additionally Applicant's two sisters and his three brothers-in-law are citizens and residents of Iraq. AG ¶ 8(a) does not apply.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, including his character evidence and work in Iraq under difficult circumstances, Applicant has not mitigated the security concerns at issue. His brother's position as a high-ranking Iraqi Army officer is significant and creates an undue risk. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

AGAINST APPLICANT

Subparagraphs 1.a-1.d:

Against Applicant

**Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge