



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



In the matter of:)
)
) ISCR Case No. 07-05155
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Ethan D. Dunn, Esquire

May 13, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On March 22, 2004, Applicant submitted a Security Clearance Application (SF 86). On December 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline B (Foreign Influence). 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 18, 2008, and requested a hearing before an administrative judge. I received the case assignment on February 25, 2008. DOHA issued a Notice of Hearing on March 10, 2008, and I convened the

hearing as scheduled on April 1, 2008. The Government offered Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and submitted exhibits (AE) A through N without objection. DOHA received the transcript of the hearing (Tr.) on April 9, 2008.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq. (Tr. 12). The request and the attached documents were not admitted into evidence but were included in the record as Administrative Notice Exhibits (Exh.) I through V. Applicant's counsel did not object to my consideration of those Exhibits. (*Id.*). Hence, 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.

Findings of Fact

In his Answer to the SOR, dated January 18, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b and 1.c of the SOR. Those admissions are incorporated into the following findings:

Applicant is 43 years old. He was born in Iraq. He graduated from high school in 1984, and was involuntarily conscripted into the Iraqi army from 1986 to 1989. From 1990 to 1997, he was married to his cousin, an Iraqi citizen.

In 1991, Applicant and three brothers left Iraq because they did not want to serve in Saddam Hussein's army or regime. (Tr. 88). They became refugees in Saudi Arabia for three years before arriving in the United States in August 1994. He became a naturalized citizen in August 2000. (Tr. 45). Subsequent to his arrival here, he worked at various jobs and experienced a period of unemployment. He began his current position as a linguist with a federal contract in March 2004. He wanted to work for the U.S. troops out of his sense of gratitude and loyalty to the United States for allowing him to emigrate here. (Tr. 94).

Applicant's parents were born in Iraq. His father is deceased and his elderly mother resides there. She is 72 years old and was a housewife. He is one of ten children, all born in Iraq. Three brothers reside in the United States. One of those brothers is a naturalized citizen and two of them are permanent residents. One of his brothers is deceased and the other brother is a citizen and resident of Iraq. His four sisters are citizens and residents of Iraq. (Tr. 77-78).

Applicant lives with one of his brothers, who is a permanent resident in the United States. (Tr. 75: GE 4). He has some contact with another brother living here, but does not communicate with the other brother. (Tr. 71-73). He has not had any contact

with his brother or four sisters, who reside in Iraq, since he left in 1991. (Tr. 79). He appears to be estranged from his siblings living there.

After leaving Iraq in 1991, Applicant maintained some contact with his mother, although he did not see her again until September 2001, when he saw her in Syria where she was visiting. (GE 4). At that time, his mother introduced him to an Iraqi woman. In May 2002, he returned to Syria and married his second wife. She came to the United States in October 2003. (Tr. 51). When he returned home from Iraq in October 2004, he discovered his wife had moved out of their residence. (Tr. 55). After she left, he stopped communicating with her. He has no knowledge of her whereabouts, as she married another man. They were divorced in January 2008. (AE A).

Applicant began working as an Arabic translator for the U.S. Army in March 2004. From that time until January 2008, he worked in Iraq at various locations. He generally worked for six or seven months and then returned home for a couple weeks before going back for additional tours. While in Iraq, he did not contact any of his family siblings, but spoke to his mother every few months. (Tr. 59; 94; GE 4). None of his family, living in Iraq, is aware of his work with the U.S. forces. (Tr. 87).

Applicant submitted several exhibits attesting to his capabilities and contributions to the U.S. Armed Forces' efforts in the war on terror. In October 2004, a lieutenant colonel of the Army brigade combat team for which Applicant worked, wrote a letter of recommendation. He stated that "[Applicant was employed as an Arabic Interpreter for Multi National Force Iraq in support of Operation Iraqi Freedom, from 01 May to 29 October 2004 . . . [Applicant's ability to translate Arabic into English and his quick thinking made the difference between success and failure for our unit's mission." (AE H). A major in that combat team noted an incident in September 2004 in which Applicant risked his life for a team member after their convoy was attacked by an explosive device. "[Applicant's] actions were well above and beyond the actions required of an interpreter. His assistance was instrumental in saving the lives of two of the wounded soldiers." (AE I). A lieutenant colonel working with Applicant from March 2005 to April 2005, stated, Applicant "was able to interpret flawlessly in all conditions." (AE J).

A captain for the U.S. Army wrote in January 2006 that Applicant "is a dedicated worker who is willing to perform any assignment and any hours assigned to him." (AE K). The captain and platoon leader of Applicant's division from July 2006 to October 2006, wrote in Applicant's performance evaluation that "[Applicant] participated in over 70 missions with coalition forces." (AE L). "[Applicant] worked with US Army leadership to help find, disrupt, and eliminate terrorist cells in and around the [city] area. [Applicant] bravely supported coalition forces everyday without fail. He faced personal danger and adversity with superior courage." (*Id.*). Applicant received a Certificate of Appreciation from a Special Forces airborne company for his outstanding support from June 1, 2007 to August 1, 2007. (AE N).

Applicant previously owned two houses in 1999. (Tr. 85). He has a U.S. bank account. He does not own any property in Iraq. (Tr. 93). There is no derogatory information concerning his police record. He has never been fired from a job or arrested. He has never used illegal drugs, or been involved in an alcohol-related incident. (GE 1).

Applicant credibly and sincerely asserted his pride of U.S. citizenship at this hearing and desire to resume his work with the U.S. Army. He stated (sic), "So I mean I loyal to United State because it give me citizen, safe for my life and my brother, and they give me everything, benefit here, and freedom. I mean why not if I go help the American." (Tr. 94). Currently, he is unemployed because his contract terminated, as a result of his security clearance issues. (Tr. 64; 90). He likes his job and wants to return to Iraq. He held an Interim Secret security clearance while in Iraq and handled classified information without breaching security regulations.

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have target 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.

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...” The Applicant has the ultimate burden of persuasion to obtain a favorable security decision. 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).

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.

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 county 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

(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, brother and four sisters are citizens and residents of Iraq. He has periodic contact with his mother. While Iraq struggles with the creation of a democracy, it continues to be routinely victimized by terrorist attacks. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest for Applicant. 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 1991, he came here as a refugee and proudly became a naturalized citizen in 2000. He worked at various jobs since his arrival, until beginning his position with a federal contractor in 2004. He does not own any property in Iraq, but has a U.S. bank account. He has a close relationship with one of his brothers, with whom he resides in the United States. He is estranged from his siblings living in Iraq, and has periodic contact with his mother, residing there. He did not return to Iraq until 2004, when he started his job with the U.S. forces. While there he did not communicate

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).

with his siblings. His ties to the United States are much stronger than his ties to his five siblings and elderly mother living in Iraq.

AG ¶ 8(c) has limited application to Applicant's relationships with his mother, brother and four sisters. Since leaving Iraq in 1991, he has not had any contact with his siblings. He saw his mother once in 2001, and contacts her periodically. None of them know about the nature of his work. Although there is a remote possibility that terrorists could attempt to coerce or threaten Applicant through his mother or 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) extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

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 mother, who live in Iraq, to obtain such information. Second, he had connections to Iraq before he left there in 1991. He was born in Iraq and spent his formative years there. Third, his mother and five siblings remain citizens and residents of Iraq. Fourth, he maintains some contact with his mother.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant is a mature person. He came to the United States as a refugee in 1994 and became a naturalized citizen in 2000. He has worked in the United States since his arrival and currently resides with his brother, who also came here as a refugee. He previously owned property in the United States, and currently has a bank account. Out of his sense of gratitude and dedication to the United States, he joined the U.S. Army, as an Arabic-speaking linguist. He takes his loyalty to the United States very seriously, and has worked diligently for a defense contractor for more than two years in an important capacity for our troops. I give great weight to the letters of recommendation, written by the soldiers with whom he served. They assess him as loyal and trustworthy, and praise his significant contributions to the cause of freedom in Iraq. After leaving Iraq in 1991, he did not return for 13 years and then solely for the purpose of helping the United States. No witnesses recommended denial of his security clearance. There is no evidence that he has ever taken any action that could cause potential harm to the United States or failed to abide by his employer's rules and regulations.

Applicant held an interim security clearance during his tenure in Iraq without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the nation security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

SHARI DAM
Administrative Judge