



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



In the matter of:)	
)	
)	ISCR Case No. 07-08496
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Dale Saran, Esquire

April 30, 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 June 17, 2005, Applicant submitted her Security Clearance Application (SF 86). On November 16, 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 December 10, 2007, and requested a decision be issued without a hearing. On January 8, 2008, she withdrew her previous request and elected to have a hearing before an administrative judge. I received the

case assignment on January 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, called three witnesses, and submitted exhibits (DE) A through I without objection. DOHA received the transcript of the hearing (Tr.) on April 11, 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. 18). 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 her Answer to the SOR, dated December 10, 2007, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. Those admissions are incorporated into the following findings:

Applicant is 50 years old. She was born in Iraq. She attended high school and undergraduate college there, earning a Bachelor of Arts Degree in Education with a minor in Psychology. In 1975, at the age of 18, she married her husband, an Iraqi resident and citizen. At an early age, she expressed an interest in immigrating to the United States and began studying English in contemplation of that move.

In 1978, Applicant and her husband immigrated to the United States.¹ She was 21 years old. She and her husband became naturalized U.S. citizen in March 1991. They have a 21 year-old son, who was born in the United States. After arriving here, she and her husband bought property and started an automobile business that he continues to own and operate. From May 1994 to August 2001, she was the office manager for the company. She subsequently worked as a teaching assistant for a local Montessori school. (DE A). In May 2004, she and her husband separated and in November 2006 they divorced. As part of the divorce decree, she received a cash settlement that she placed in the bank. Her son lives with her former husband and works in the business.

After separating from her husband in 2004, Applicant began looking for full time employment. Cognizant of her strong language skills and knowledge of Iraqi culture and customs, she decided to apply for a position with Operation Iraqi Freedom, in order

¹ Saddam Hussein was not president of Iraq in 1978.

to help our troops. In early 2005, she completed an application for an Arabic linguist position with a federal contractor that provided assistance to U.S. Army troops in Iraq. She was hired and then sent for a couple weeks of training. In July 2005, she returned to a major Iraqi city where she was assigned duties as an interpreter for the military intelligence division. In that position, she performed interrogations and medical screenings for detainees. She remained there for nine months, before returning home for a short vacation. In February 2006, she went to another city in Iraq and performed screenings of individuals that were seeking admittance to the base. She stayed there for one year before going home for a short vacation. Over all, she worked in Iraq for two and a half years. (Tr. 85).

According to Department of Defense policy that governs federal contractors, Applicant was not permitted to leave the bases where she worked in Iraq. (Tr. 88). She abided by that rule. She received an interim Secret Clearance and had access to classified information while performing her duties in Iraq. (Tr. 85-86). There is no evidence in the record that while holding a security clearance in Iraq, she breached any security policies.

Applicant's elderly parents were born in Iraq and reside there. She is one of three children, all born in Iraq. Her parents are Catholic. Her two brothers are married and resident citizens of Iraq. Both of them served in the Iraqi army, as did her husband, as required under Iraqi law. Her parents are retired. Her father, age 76, was a salesman and her mother, age 74, was a registered nurse, who worked for the Iraqi government. She currently collects a government pension. (Tr. 103-105). Her brothers, along with their families, live with her parents. One of her brothers works in a government office and the other brother works as an accountant for a hospital. One of them is seeking to immigrate to Canada. (Tr. 108-109).

After leaving Iraq in 1978, the next time Applicant saw her parents was in 1980 when her mother visited her in the United States. Both parents came in November 1993 and contemplated moving here. However, they returned to Iraq in March 1994, after deciding they were too old to learn a new language and customs. Applicant returned to Iraq in 2000 to visit her family. That was the last time she physically saw her family. (Tr. 120).

Prior to going to Iraq for her job, Applicant spoke to her parents about once a month. After arriving there in July 2005, she generally spoke to her mother once or twice a week.² She has had very limited conversations with her father or brothers over the years. While in Iraq, she sent \$1500 to one of her brothers because he was out of work. (Tr. 111). Since returning to the United States in December 2007, she telephones her mother monthly.

Applicant has a U.S. bank account, but no longer owns property in the United States. She does not own any property in Iraq. There is no derogatory information

² The Department of Defense permits federal contractors to phone friends or relatives in Iraq while working there, provided they do not disclose any vital information. (Tr. 120-121).

concerning her police or financial records. She has never been fired from a job or arrested. She has never used illegal drugs, or been involved in an alcohol-related incident. (GE 1).

The senior pastor of Applicant's church testified. He has known her since the fall of 2001 and is aware of Applicant's background and work with the U.S. military in Iraq. They have had numerous conversations over the years, and he has no doubts about her loyalty to the United States. (Tr. 26-34).

One of Applicant's friends from church testified. He is a lawyer and active member in various ministries. He has known her for six years. They have maintained periodic communication over those years. Although he did not know what her position was in Iraq, he knew she was required to be careful in communicating with her family, residing there. (Tr. 37-42).

A Major with the U.S. Marines, presently stationed in Iraq, testified by telephone. He met Applicant in early February 2006, while serving as an assistant force protection officer. He knows her professionally, as an interpreter, and personally as a member of a bible studies group. They worked in a division that screened individuals, many of them local nationals, seeking admittance to the military base. (Tr. 53). They interacted three to four times a week for about a year. (Tr. 55; 61). He observed that she took her job very seriously and carefully complied with all confidentiality requirements. (Tr. 57). He was aware that Applicant had family living in Iraq, which is common for many Iraqis working on the base and living in Iraq. He was never concerned that Applicant's family relationships would cause a potential problem for her. (Tr. 58). He knew she had telephone conversations with her mother. (Tr. 65). He considered her to be in the "top 10 percent" of the translators with whom he worked. (Tr. 59). He was grateful to have her present and was able to perform his job better because of her skills. (Tr. 60). He thinks "she's trustworthy. I mean there's no doubt in my mind. I would trust her with my life." (Tr. 67). In an affidavit, he wrote as follows:

She sacrificed her time and risked her life in support of Operation Iraqi Freedom for over two years. Her service has been nothing less than commendable. Without the service of people like [Applicant] our military would not have been able to accomplish the things we have thus far accomplished. Her role was priceless. She was a loyal patriot who used her language ability to the benefit of the mission and well-being of our Marines and Soldiers on the ground in Iraq. She is a true citizen of this great nation. (DE I).

Applicant submitted several exhibits attesting to her capabilities and contributions to the U.S. Armed Forces' efforts in the war on terror. On October 2005, she received a Certificate of Achievement from the Major of the combat team with whom she was working. The Certificate states that Applicant "performed her duties with outstanding professionalism and courage [Her] cultural knowledge of the Arabic Region provided useful insight about the people and customs of Iraq. Working shoulder to

shoulder with soldiers, she often put herself in harms way to accomplish the mission.” (DE A at 7).

A team leader for Applicant’s group wrote, “During January 2006 through November 2007, [Applicant] performed her duties in a responsible and thorough manner. Her attention to detail and ability to translate difficult and challenging language differences was done in a professional manner and was greatly appreciated.” (DE A at 8). Another interpreter, who worked with Applicant for 22 months, complimented Applicant for her hard work and professionalism. (DE D). She was aware of Applicant’s immediate family members living in Iraq and was not concerned about it. She wrote, “Many of the Iraqi interpreters working on the base have family in Iraq – it’s how they speak the language! It is very common and as far as I know has never been an issue.” (DE D).

Applicant credibly and sincerely asserted her pride of U.S. citizenship at this hearing and desire to resume her work with the U.S. Army. Currently, she is unemployed because her contract terminated, as a result of her security clearance issues. (DE H; Tr. 118).

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;³ 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, father and two brothers are citizens and residents of Iraq. 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. 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 her relationship and depth of loyalty to the U.S., she can be expected to resolve any conflict of interest in favor of the U.S. interests. At an early age, she expressed an interest in immigrating to the United States and began learning English. In 1978, she moved here with her husband and became a naturalized citizen in 1991. Her son was born in the United States. She worked in the United States since her arrival, until beginning her position with a federal contractor in 2005. She previously owned property and a business here while married to her former husband. She does not own any property in Iraq, but has a

³ 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).

U.S. bank account. She established close relationships with members of her church and maintains those connections. She did not return to Iraq until 2000, when she returned for a family visit. Her ties to the United States are much stronger than her ties to her two siblings and elderly parents living in Iraq.

AG ¶ 8(c) has limited application to Applicant's relationships with her brothers, with whom she has infrequent communication, albeit she sent one of them some money. Although there is a remote possibility that terrorists could attempt to coerce or threaten Applicant through her two 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 her siblings and parents, who live in Iraq, to obtain such information. Second, she had numerous connections to Iraq before she immigrated to the United States in 1991. She was born in Iraq and spent her formative years there. She was educated at an Iraqi university. Third, her parents and two siblings

remain citizens and residents of Iraq. Fourth, she maintains some contact with her family, in particular her mother.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant is a mature person. At an early age, she began studying English, in order to come to the United States, where she has lived for 30 years and been a naturalized citizen for 17 years. Her son was born here. She owned a business and property here for over ten years, and presently has a bank account here. Out of her sense of love and dedication to the United States, she joined the U.S. Army, as an Arabic-speaking linguist. She takes her 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 major's testimony, who assesses her as loyal and trustworthy, praising her capabilities and significant contributions to the cause of freedom in Iraq. Other colleagues confirm that assessment. After leaving Iraq in 1978, she did not return for 22 years. Five years after that trip, she returned solely for the purpose of helping the U.S. Army. No witnesses recommended denial of her security clearance. There is no evidence she has ever taken any action that could cause potential harm to the United States or failed to abide by her employer's rules and regulations. There is not any derogatory information about her in the record.

Applicant held an interim security clearance during her tenure in Iraq without any indication that she 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

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