



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



In the matter of:)
)
) ISCR Case No. 15-04996
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

December 22, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a naturalized citizen of the United States. He surrendered his Iraqi passport to his security officer, shortly after becoming a U.S. citizen. It was subsequently destroyed. All of his immediate family members, with the exception of his elderly mother-in-law, are residents of the United States. He repaid one debt, is rehabilitating his mortgage, and has hired a debt consolidation company to manage his remaining delinquent debts. Security concerns raised under Foreign Preference, Foreign Influence, and Financial Considerations are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On August 24, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guidelines for Foreign Preference, Foreign Influence, and Financial Considerations. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on September 12, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 16, 2015. DOHA issued a notice of hearing on November 18, 2015, scheduling the hearing for December 16, 2015. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. The Government also offered the cover letter to the discovery materials forwarded to Applicant on November 5, 2015, marked Hearing Exhibit (HE) I, and information pertaining to Iraq for administrative notice, marked HE II. Applicant offered Exhibits (AE) A through I, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of additional documents. On December 16 through 18, 2015, Applicant submitted additional exhibits, marked AE J through AE V. Department Counsel had no objections to AE J through AE V and there were admitted into evidence. DOHA received the transcript of the hearing (Tr.) on December 22, 2015.

Findings of Fact

Applicant denied all of the allegations in the SOR.¹ After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 40 years old. He was born in Iraq. He grew up in Iraq and served in the Iraqi Army as an intelligence officer from 1995 to 2003. In 2003 he surrendered himself to the U.S. Forces. After a thorough screening, he was hired as a linguist by a U.S. contractor to work for the U.S. Army. He worked as a linguist alongside the U.S. Army through various government contractors from December 2005 to September 2007, and October 2007 to March 2011. He was employed in private sector positions from 2011 to 2013. In 2013 he was hired again as a linguist by a federal contractor. He has been unemployed since January 2014, with a brief period of employment from March to April 2015. He was unemployed until late November 2015, when he accepted employment with another government contractor. (GE 2.)

In 2006, while working for the U.S. Army, Applicant's family received a threatening letter from unidentified individuals after they ransacked his house because they knew he was working for U.S. led forces. He immediately turned the letter into his supervisor, a Major in the U.S. Army, and was told to evacuate his family. His immediate family, including his wife, child, parents, and siblings left immediate for safety in Jordan. The unidentified insurgents "blew up" his house the next day. (Tr. 38-40.)

Applicant was sponsored by his Army Unit for a special immigration visa to the United States. He moved his family to the United States in 2007. He renewed his Iraqi passport on July 5, 2007, as he was not yet a U.S. citizen and needed to travel for his position as a linguist. His Iraqi passport was set to expire on July 4, 2015. Applicant was

¹ The SOR incorrectly started the lettering of the allegations under ¶ 2, with ¶ 2.b. It omitted ¶ 2.a.

naturalized as a U.S. citizen in January 2013. On September 5, 2013, he relinquished the Iraqi passport to his security officer. The security officer presented an affidavit that the passport was surrendered and destroyed. Applicant considers himself as solely a U.S. citizen and renounced his Iraqi citizenship. (GE 2; GE 3; Tr. 14-16, 40-42.)

All of Applicant's immediate family members and almost all of his extended family are residents of the United States. His wife, daughter, brother, and oldest sister are U.S. citizens. His wife was naturalized in 2013. His brother and oldest sister became citizens in 2014. They do not maintain dual citizenship with Iraq. His mother, father, and disabled younger sister are citizens of Iraq, but are permanent residents in the United States. They have resided in the United States since 2012. They do not travel to Iraq or intend to return there. (GE 2; GE 3; Tr. 42-52.)

Applicant's only relative remaining in Iraq is his mother-in-law. She is over 65 years old and is unable to leave Iraq due to a severe medical condition. Applicant's father-in-law is deceased. His mother-in-law is supported by retirement benefits earned by his father-in-law. Applicant has not had any contact with her for five years. (GE 2; GE 3; Tr. 49-53.)

Applicant had a friendship with an Iraqi citizen while working for a private contractor in Iraq. His friend worked in the construction business. He has not had any contact with that friend since their business relationship ceased in December 2012. (GE 3; Tr. 50-54.)

Applicant is alleged to be delinquent on 12 accounts. His accounts began to fall delinquent for the first time in late 2014 and early 2015, as reflected in his December 2015 credit report. (GE 8.) He testified that he was current on all of his accounts until his January 2014 unemployment. Over the following months, he exhausted his savings to pay bills. During that same time period, he and his wife incurred over \$120,000 in medical bills due to emergency surgeries they both required, because of their lack of health insurance due to his unemployment. He kept in contact with his creditors, throughout his financial difficulties, and documented that he made payments on some of his debts though they were less than his monthly minimums. He was unable to find employment until November 2015. (GE 4 through GE 8; Tr. 14-19, 55-75.)

Immediately after obtaining employment in November 2015, Applicant contacted a debt management company to consolidate his debts and make payments on them. On December 1, 2015, Applicant signed an agreement with the debt management company. He enrolled the debts identified in SOR allegations ¶¶ 3.a through 3.g, 3.i, 3.j, and 3.l into the repayment plan. The debt management plan established monthly payments of \$653 from January 20, 2016, through January 20, 2018. He owes a total of \$31,593 on these debts. The debt management company is in the process of negotiating payments with these creditors and anticipates the debts to be resolved for approximately \$15,289. Applicant presented copies of his December 2015 pay stub that shows he will be able to afford the scheduled payment. He testified that he intends to repay the debts as quickly as possible. He testified, "my intent is to pay off my --all my --what I owe for these creditors, not just for this clearance, it's for my future . .

.” (Tr. 74.) Applicant is acting responsibly, given the circumstances, with respect to these debts. (Tr. 55-75.)

Applicant is \$27,747 delinquent on his home mortgage, identified in ¶ 3.h, in the total amount of \$335,315. He entered a home affordable modification program. It is a trial program that will allow him to rehabilitate his mortgage by adding the delinquent amount back into the mortgage. His December 12, 2015 credit report reflects this debt as “paying under a partial payment agreement.” This debt is being resolved. (GE 8.)

Applicant’s December 12, 2015 credit report dated has two entries for the debt to creditor 3.k. Both bear the same account number. The second entry shows the debt in ¶ 3.k was “paid and closed”. This debt is resolved. (GE 8, at 9.)

Applicant is highly respected by those know him. His performance as a linguist was praised by numerous high-ranking officers that served with Applicant. One lieutenant colonel opined, “his experience, interpreting skills, professionalism, and dedication to duty make him an outstanding asset to any organization.” (AE K; AE L; AE M; AE N; AE Q.) His performance review from 2006 to 2007 reflects that his “service was exemplary and noteworthy.” His duties were performed “in an active combat zone,” and his conduct “was without reproach and executed under periodic hostile fire.” (AE J.) He has received several awards for his service. (AE O; AE P; AE R.)

Iraq

I have taken administrative notice of the U.S. Government’s pronouncements concerning the state of Iraq, as outlined in HE II, including the following: Iraq has made significant political and economic progress in recent years, but the country still faces many challenges. Numerous terrorist groups are increasingly active throughout Iraq. The Islamic State of Iraq and the Levant (ISIL or Islamic State) control approximately one third of the country’s territory. The country’s economy is suffering from ongoing criminal and terrorist violence and government mismanagement. Additionally, Al Qaeda affiliates continue to represent a major threat to Iraqi stability. Due to attacks from ISIL, the Iraqi government has lost large areas of control over areas of the country. The ISIL offensive has caused Iran to increase military support to the Iraqi government, potentially increasing Tehran’s influence within the Iraqi government.

Policies

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 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 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.

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 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 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.

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 C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes one condition in this case that could raise security concerns under AG ¶ 10.² The following is potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport.

Applicant possessed an Iraqi passport at the time of his naturalization as a U.S. citizen in January 2013. He retained that passport for approximately nine months after becoming a U.S. citizen. He relinquished his Iraqi passport to his security officer in September 2013. It was subsequently destroyed. He no longer possesses a “current foreign passport,” and has not done so for over two years. The evidence is insufficient to raise the above disqualifying condition.

Guideline B, Foreign Influence

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

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. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country 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. The following are 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; and

² The sole allegation under Guideline C alleged that Applicant “exercised [his] Iraqi citizenship by possessing an Iraqi passport issued on July 05, 2007, with an expiration date of July 04, 2015.” The SOR failed to allege Applicant’s prior Iraqi military service. As a result, it was not considered under the disqualifying conditions under AG ¶ 10. This service will be considered under the Whole-Person Concept section, below.

(d) sharing 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.

Applicant's wife, daughter, brother, and older sister are U.S. citizens and reside in the United States. His parents and younger sister are Iraqi citizens and reside in the United States. His mother-in-law is his only relative that remains in Iraq. She is elderly, ailing, and Applicant has had no contact with her for five years. He also had a friend in Iraq, although they have not communicated in several years. Due to his wife's ties to her mother, and the terrorist threats present in Iraq as set out in HE II, a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion is present. Her presence in Iraq creates a potential conflict of interest. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 interests in favor of the U.S. interests.

Applicant has actually been placed in the position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S., as a consequence of his choice to serve the U.S. Army as a linguist. At great risk to his family, he has repeatedly chosen the United States. The insurgents in Iraq threatened him and destroyed his home. Subsequently, he moved his family to the United States and they have assimilated into American culture. He owns a home here, and is raising his daughter as an American. He wishes to serve the Army further through his unique skills, despite periodically placing his life at risk due to hostile fire. He is trusted by those with whom he has served with and is considered to be an asset. His honorable service to the U.S. leaves no question that Applicant can be expected to resolve any conflict of interests in favor of the U.S. interests. AG ¶ 8 (b) mitigates all Foreign Influence concerns.

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially

overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated 12 delinquent debts. They have been delinquent since late 2014 or early 2015. These debts establish both a history of delinquencies and an inability or unwillingness to satisfy his obligations. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. The following provides mitigation:

- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

Applicant's financial problems were caused by unemployment and compounded by his and his wife's costly emergency surgeries. These are circumstances beyond his control. Despite his financial difficulties, he resolved \$120,000 in medical bills, made payment arrangements with his mortgage holder to rehabilitate his mortgage, and resolved one other debt in full. As soon as he acquired a full-time position, he contracted with a debt consolidation firm to manage his unresolved debts. The debt management company is negotiating with his creditors and he will make his first payment under the plan in January 2016. He has sufficient funds to afford the payment plan. While not all of his debts are resolved, he is acting responsibly with respect to his debts. Applicant's indebtedness does not cast doubt on his current reliability, trustworthiness, or good judgment. The security concerns with respect to his financial delinquencies are 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 relevant 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) 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), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Although this case pertains to Guidelines B, C, and F, the security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that warrant further analysis. First, there is a significant risk of terrorism and various human rights abuses in Iraq. More importantly for security purposes, terrorists in Iraq are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant's mother-in-law to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States. Following his birth, he spent his formative years there. He was educated at an Iraqi university and served in the Iraqi Army. Third, he incurred a significant amount of delinquent debt since 2014.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States since 2007. His spouse is also a naturalized citizen, as are his daughter, brother and one sister. He owns property here. In his position as a linguist, he has provided vital and direct support to the U.S. Armed Forces, sometimes under enemy fire. His home in Iraq was destroyed by insurgents, but he chose to continue to support U.S. forces. His ties to the United States are much stronger than his ties to his mother-in-law who remains in Iraq. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously. He has worked diligently for a defense contractor for several years in an important capacity. His supervisors assess him as loyal, trustworthy, and responsible, giving him excellent evaluations and praising his dedication to the cause of freedom in Iraq. There is no derogatory information about him in the record, other than potentially his financial difficulties, which he is addressing responsibly.

The Appeal Board noted in ISCR Case No. 05-03846 (App. Bd. Nov.14, 2006) 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 national 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.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant mitigated the security concerns pertaining to foreign influence.³ 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 he met his burden to mitigate the security concerns arising under the guidelines for foreign preference, foreign influence, and financial considerations.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.b through 2.h:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a through 3.i:	For Applicant

³ I conclude that the whole-person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶¶ 8, 10 and 20 do not apply and severs any consideration of them; I conclude the whole-person analysis standing alone is sufficient to support approval of a security clearance in this case.

Conclusion

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

Jennifer I. Goldstein
Administrative Judge