



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



In the matter of: )  
)  
) ISCR Case No. 07-05825  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn E. Hoffman, Department Counsel  
For Applicant: *Pro Se*

June 30, 2008

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant is an Iraqi born, naturalized U.S. citizen, who has lived in the United States since 1998. He supported military operations in Iraq on multiple occasions deploying with U.S. Army unites. He has substantially more connections to the United States than to Iraq. Applicant’s mother and brother are citizens of Iraq residing in the U.S. Applicant has a brother and three sisters who are citizens and residents of Iraq. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government’s security concerns under guideline B, foreign influence. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of Case**

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order

and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on October 18, 2007, detailing security concerns under Foreign Influence.

On November 7, 2007, Applicant answered the SOR, and requested a hearing before an administrative judge. On January 31, 2008, I was assigned the case. On May 7, 2008, DOHA issued a notice of hearing scheduling the hearing held on May 19, 2008. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through F, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On June 2, 2008, additional documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. F. On June 5, 2008, the transcript (Tr.) was received.

## **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. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEX) I–V. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with explanations, the factual allegations of the SOR.

Applicant is a 36-year-old translator who has worked for a defense contractor since September 2005, and is seeking to obtain a security clearance. Applicant received a letter of recommendation for his work with the U.S. Army. (Ex. A) He was a language linguist and document translator whose “work entailed long hours in austere conditions with an ever present risk of hostile fire.” (Ex. A) Applicant was a team player always willing to sacrifice his own time and creature comforts to ensure that the mission was accomplished. His language skills, keen personal insights, and cultural acumen enabled the Task Force to accomplish its mission in a timely manner. He received three Certificates of Appreciation and a Letter of Appreciation for his support of the mission. (Exs. B, D, E, and G)

As a linguist translating and analyzing captured documents, Applicant helped in the review and translation of thousands of captured documents. (Tr. 26) Applicant sacrificed his home, family, and his own personal safety and security, to travel to Iraq.

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<sup>1</sup> 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

(Ex. C) He was recognized for his professionalism, work ethic, maturity, eagerness to contribute, willingness to be flexible, and natural ability to mentor younger contractors. (Ex. C and D) He was instrumental in locating the top Al-Qaeda operative in Iraq. (Tr. 23) Applicant believes he is helped in his job by being born in Iraq and knowing Iraqi slang, which other translators did not know. (Tr. 41)

In 1988, his father, then age 46, who worked for a car parts company died. His father was conscripted to do work with the Iraqi Army. The Iraqi army had the power to simply grab people off the street and conscript them to labor for the army. His father suffered from a kidney problem and had surgery scheduled a week from the day he was conscripted. (Tr. 81) He was gone for two months with no communication with his family. His family did not know his whereabouts and feared he was dead. His father was allowed to return home after two months, but died a week after his return.

Applicant was 16 years old at the time. At age 18, Applicant was required to do mandatory military duty with the Iraqi Army. He served from April 1990 until July 1990. When Hussein invaded Kuwait in August 1990, Applicant deserted. (Tr. 32) Had he been caught, he would have been executed. Two years earlier, his brother had deserted, was captured, but was able to bribe his captors and instead of being executed was sentenced to two years imprisonment. (Tr. 83, 112) His brother was jailed from 1986 to 1988.

In 1991, Applicant and his brother, surrendered to the U.S. Army and went to a POW camp in Saudi Arabia. (Tr. 33) He was there for one year and four months, from April 1991 to August 1992, before coming to the U.S. as a refugee. (Tr. 33) Leaving as a refugee, Applicant lost his Iraqi citizenship. (Tr. 77) In October 1998, he became a naturalized U.S. citizen. He describes the day as an excellent day and as "the happiest day of his life." (Tr. 120) In February 2004, he was hired by a language resource firm. From February 2004 until August 2004 he prepared for his first deployment. From November 2005 to November 2006, December 2005 to January 2006, and in February 2007 until his clearance was removed in October 2007, he served in Iraq with the U.S. Army as a translator. (Exs. 2, B, D, and E, Tr. 27, 28) During his three deployments to Iraq, Applicant had no contact with any of his relatives living in Iraq. When his siblings ask about his job, he tells them he is a cook. (Tr. 38, 93)

Applicant's mother has been a resident of the U.S. since 2000. His mother has no desire to return to Iraq. She wants to stay in the U.S. and have her family join her here. (Tr. 70, 124) His mother applied to bring four of his seven siblings who are living in Iraq to the U.S. (Tr. 67) His siblings dream of coming to the U.S. (Tr. 124) Applicant has three sisters who are citizens and residents of Iraq and do not work outside the home. He has not seen his sisters since he left Iraq in 1991. He talks with two of his sisters twice a month and the other sister four times a year. (Ex. 3) Applicant's mother usually calls his relatives in Iraq and Applicant may talk with his siblings. (Tr. 118-119)

Applicant's one sister, whose husband sells cars part-time, was a former bank clerk. Her husband is also an engineer working for the Iraqi Navy in oil sales. (Tr. 102-103) Applicant last talked with this brother-in-law in 2004. (Tr. 118) He has a sister, who

was widowed in 2004, who lives in Iraq and is unemployed. At one time, he sent funds to help his widowed sister. Since 2006, he has sent no funds. (Tr. 47) His brother in Germany now supports this sister. (Tr. 85, 98) His youngest sister is divorced, lives with her sister, and is also unemployed.

Applicant's oldest brother living in Germany also left Iraq as a refugee. His brother was a cook who wants to open a grocery store, but since August 2006 has worked for a spice company. (Tr. 86) Applicant has a brother who lives with him in the U.S. and is working to become a U.S. citizen. His brother must be a U.S. resident for five years before he can apply for citizenship. His brother just married and is returning to school. Since leaving Iraq in 1991, he has seen his brother who lives in the U.S. He saw his youngest brother who he saw in 1999 when Applicant visited Syria. (Tr. 115) In 2004, Applicant saw his brother in Germany when Applicant was deploying to Iraq and had a nine hour delay at the airport. (Tr. 116)

Applicant has a brother who works on a farm in Australia and has become an Australian citizen. (Tr. 99) His youngest brother lives in Iraq and was working in an electrical equipment store, but is now a student studying computer science. (Tr. 102, 117)

In 2001, Applicant's father-in-law who was a store owner died. His mother-in-law is unemployed and lives in Iraq. (Tr. 107) His wife has two brothers and a sister living in Iraq. His sister-in-law is an in home tutor. One of his brothers-in-law is in the Iraqi Army working for the U.S. forces. (Tr. 108, 134) His other brother-in-law is a barber. His wife has telephone contact with them every two weeks to once a month and is trying to get them into the U.S. as permanent residents.

In May 1999, Applicant visited Syria and Jordan where he visited his family who had traveled from Iraq. This was the first time he had seen his mother in seven years. (Tr. 36) Only his youngest brother was able to see him. His other brothers were restricted from leaving the country. (Tr. 36) He was out of the U.S. for 24 days. In June 2000, he went to Syria to see relatives who traveled from Iraq for his marriage in Jordan. He had first met his wife when he was 16 years old. (Tr. 88)

In July 2000, Applicant married an Iraqi citizen who is working on obtaining her U.S. citizenship. They have three children all born in the U. S., a son born in August 2001, a daughter born in 2006, and a son born in 2008. Applicant has no foreign investments. (Tr. 61) Their home is worth \$160,000. Applicant also owns a rental unit worth between \$80,000 and \$100,000. (Tr. 60) Applicant has no loyalty to Iraq. (Tr. 32) He believes Iraq never gave him "anything, no respect, no freedom, nothing." (Tr. 33) The only passport he has is his U.S. passport. (Tr. 77)

Applicant wants to become an Iraqi Advisor, which involves assisting and advising U.S. military commanders and staff. (Ex. F) It requires the ability and willingness to work in close supporting units, operation centers, with other advisors to facilitate meetings between U.S. and Iraqi government officials. (Tr. 43-44)

## **Iraq**

I take administrative notice of the following facts. Iraq is a constitutional, parliamentary democracy with a federal system of government. (Hex I) It is a republic with a freely elected government led by a Prime Minister. (Hex I) The 2005 Iraqi Constitution guarantees all Iraqis basic rights in many areas. Iraq's legislative branch consists of an elected Council of Representatives. Iraq's judicial branch is independent, and is under no authority but that of the law. The focus of the United States policy in Iraq remains on helping the Iraqi people build a constitutional, representative government that respects the rights of all Iraqis and has security forces capable of maintaining order and preventing the country from become a safe haven for terrorists and foreign fighters. The ultimate goal is an Iraq that is peaceful, united, stable, and democratic, with institutions capable of providing just governance and security for all Iraqis and is an ally in the war against terrorism.

The risk of terrorism directed against U.S. citizens and interests in Iraq remains extremely high. (Hex III) The Department of State continues to strongly warn U.S. citizens against travel to Iraq, which remains very dangerous. (Hex V) There is credible information that terrorists are targeting civil aviation. All vehicular travel in Iraq is extremely dangerous. The government was only recently able to diminish violent attacks, although large efforts were made to implement better security measures. (Hex V)

## **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 as to obtaining a favorable security 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 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).

## **Analysis**

### **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. 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. (AG ¶ 6)

Applicant mother and seven siblings were citizens of Iraq. His mother now resides in the U.S. as does one of his brothers. Another brother is now an Australian citizen living in Australia and another brother lives in Germany. He has three sisters and one brother who are citizens and residents of Iraq. Applicant left Iraq fleeing the Hussein regime by going to a POW camp in Saudi Arabia. In 1992, he came to the U.S. as a refugee. In 1998, he became a naturalized U.S. citizen. He has been deployed to Iraq three times working with the U.S. military forces. Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could possibly raise a security concern are AG ¶ 7(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 AG ¶ 7(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" apply.

The new Iraqi government relies upon the U.S. for support as it moves forward with its new form of government. While Iraq's human rights record under Saddam Hussein was very dismal and some problems continue, its human rights record is slowly improving under the new government.

In every case where a sibling lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is not substantiated. Applicant has significant ties to the U.S. and few ties to Iraq. While he still has a brother and three sisters living in Iraq, he lives with his wife and mother in the U.S. He has no financial or property interests in Iraq. His three children were born in the U.S. He owns a home and a rental house in the U.S. Applicant's ties with the U.S. are much stronger than his ties with Iraq.

Applicant's work as an interpreter supported the U.S. military mission in Iraq. He has gone to Iraq three times to work with the U.S. military. He worked long hours in austere conditions with an ever present risk of hostile fire. The Army holds his work in high regard. He provided more than language interpretation skills. He explained local cultural nuances and practices which greatly assisted the military in accomplishing its mission. During his time in Iraq, he worked very hard to help the Army and developed a high level of trust with the Army. In part due to his efforts, the highest ranking Al-Qaeda leader in Iraq was located and killed and information obtained adversely impacted on the remaining Al-Qaeda members in Iraq.

If a heightened risk exists because he has siblings in Iraq, he has mitigated that concern under AG ¶ 8(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 U.S." and 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."

Applicant's older brother, works for a spice company in Germany, another brother works on a farm in Australia and is an Australian citizen, a third lives in the U.S. and his youngest brother is a student in Iraq. His three sisters do not work outside the home. He has a brother-in-law who is employed by the Iraqi Navy, but Applicant has not talked with him since 2004. None of his siblings are involved with organizations which seek to harm the U.S.

During the three deployments Applicant was in Iraq, he did not contact his siblings. They have not experienced any repercussions from any source because of Applicant. There is little likelihood that Applicant will be placed in a position of having to choose between the interests of the U.S. and a foreign entity. Likewise, because of his close ties and his loyalties to the U.S., he would resolve any conflict of interest in favor of the U.S.

### **Whole Person Concept**

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to Iraq and the heavy burden an Applicant carries when he has family members in a foreign country.

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) 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.

In the more than 17 years since he left Iraq, Applicant returned three times, each time working closely with the U.S. military as an interpreter. Because he guided the Army personal on local customs and nuances related to the spoken word, translated captured documents, and responded very well in highly dangerous situations, the Army views him as a valuable resource in helping it achieve its mission in Iraq.<sup>2</sup> With his long absence from Iraq, he has few contacts in the country outside of his four siblings.

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<sup>2</sup>In ISCR Case No. 05-03846 at 6 (App. Bd. Nov.14, 2006), the Appeal Board recognized an exception to the general rule in Guideline B cases when "an applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurs in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the

While danger certainly exists for all who go to Iraq, Applicant and his siblings are in no greater danger than any other individual living and working in Iraq. The U.S. and Iraq governments have developed a close and positive working relationship. Iraq depends upon the U.S. to help in its fight to combat the developing insurgency and terrorist forces. The Iraq government is moving forward with democracy and developing a rule of law, with the assistance of the U.S.

Applicant has no love for the former brutal regime. The Hussein regime killed his father, imprisoned his brother, and he and his brother were able to escape the country only by surrendering to the U.S. military and going to a POW camp. When he left Iraq, he was no longer an Iraqi citizen. Frequently, Applicant went in harms way to assist U.S. special forces in performing their duties in Iraq. He did this not once, but during three different deployments. The only reason he is not there now is because he lost his clearance because of his siblings living in Iraq.

I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I find that there is little potential for Applicant to be pressured, coerced, or exploited because he has four siblings living in Iraq. 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 foreign influence security concerns.

### **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 – 1.g:           For Applicant

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.

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CLAUDE R. HEINY II  
Administrative Judge

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national security . . . [and therefore he] can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation."