



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-04945
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Rita O'Brien, Esquire, Department Counsel
For Applicant: Robert Sparks, Jr. Esquire

January 17, 2008

Decision

HENRY, Mary E., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on June 8, 2005. On July 12, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns regarding Applicant under Guideline B. 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 acknowledged receipt of the SOR on July 17, 2007. He answered the SOR in writing through counsel on August 1, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on August 3, 2007. Department Counsel issued a ready to proceed notice on October 18, 2007. The hearing office

assigned this case to another administrative judge on October 26, 2007, and issued a notice of hearing on November 5, 2007. The hearing office reassigned this case to me on November 21, 2007, and I convened the hearing as scheduled on December 11, 2007. The government offered Exhibits (GE) 1 through 4, which were received and admitted without objection. Applicant and one witness testified. At the hearing, Applicant submitted Exhibits (App Ex) A and B, which were marked and admitted over the government's objection. The record closed at the end of the hearing. DOHA received the transcript of the hearing (Tr.) on January 2, 2008. Based on a review of the case file, pleadings and exhibits, Applicant has not mitigated the government's security concerns under Guideline B. His eligibility for a security clearance is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Yemen, Russia, and Qatar.¹ The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits I-III. Applicant's counsel argued that the facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute.² The facts administratively noticed are set out in the Findings of Fact, below.

Evidentiary Rulings

The government objected to the admission of Applicant Exhibits A and B on the basis of relevance, arguing that the type of a job an Applicant performs isn't relevant to the security clearance adjudication. I overruled the government's objection and admitted the evidence, on the grounds I would determine what weight, if any, I would accord this evidence.

Findings of Fact

In his Answer to the SOR, dated August 1, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.e -1.r of the SOR, with explanation. He denied the factual allegations in ¶¶ 1.c and 1.d of the SOR.³

Applicant, who is 30 years old, works as a member of a digital outreach team for the Department of State. He is one of five team members who are fluent in Arabic. Because he is fluent in Arabic, his duties require him to work in Arabic cyberspace,

¹Tr. at 10-12.

²*Id.* at 13.

³Applicant's response to the SOR, dated August 1, 2007.

where he communicates with individuals in chat rooms and provides them with accurate information about the United States (U.S.) government.⁴

Applicant immigrated to the U.S. from Yemen, where he was born, in 1993 at age 16. Applicant became a U.S. citizen on July 7, 1994. He currently holds a U.S. passport. His Yemen passport expired in 1997, and he does not intend to renew it.⁵

Applicant's father was born in Yemen and is now a U.S. citizen. Applicant's father worked in the Merchant Marines for approximately 25 years, and is now retired. Applicant sees his father periodically. While working for the Merchant Marines, his father divided his time between Yemen and the U.S. His father owns a house in Yemen, but not in the U.S. Since his retirement, Applicant's father continues to split his time between Yemen and the U.S. Applicant communicates with his father more frequently when his father is in the U.S. Applicant moved to his current geographical location in the U.S. two years ago. His father has visited him once.⁶

Applicant's father married his first wife, who is not Applicant's mother, in the 1960s. His father has one daughter, now 39 years old, from this marriage. Applicant's step-sister lives in and is a citizen of Yemen. Applicant had little contact with her as he grew up and continues to have little contact with her. He visited with her in 2003, but has not had any contact with her since this time.⁷

Applicant's mother and father married in the mid-1970s. His parents divorced when he was between ages 1 and 2. His Yemeni grandmother raised him and his brother, who is 32 years old, after his parents divorced. His grandmother died in 2000.⁸

Applicant's brother immigrated to the U.S. with him in 1993. His brother continues to live and work in the U.S. To the best of Applicant's knowledge, his brother is still a citizen of Yemen. Applicant does not know if his brother has become a U.S. citizen because they talk infrequently, but acknowledged his brother could have obtained U.S. citizenship without his knowledge.⁹

Applicant's mother married a second time subsequent to his parents' divorce. She gave birth to three daughters during this marriage. Applicant's mother and second

⁴GE 1 (Applicant's application for a security clearance (SF-86), dated June 8, 2005) at 1; Tr. at 20-21, 31-33.

⁵GE 1, *supra* note 4, at 1; GE 3 (Personal Interview summary) at 7; Tr. at 36, 46.

⁶Tr. at 36-37, 41, 62, 70-77.

⁷GE 3, *supra* note 5, at 2; Tr. at 39, 77.

⁸GE 3, *supra* note 5, at 2; Tr. at 37.

⁹Tr. at 36, 46.

husband divorced. Applicant has no contact with his mother's second husband. Applicant's mother married her third husband five years ago. She lives with her husband in Qatar and is a citizen of Qatar. Applicant met his step-father in 2003 for the first time. He has not seen his stepfather since and has spoken to him by telephone sometimes when he has called his mother. His stepfather is a retired employee of a Qatar city government. His stepfather worked in a government position similar to a Department of Motor Vehicle position in the U.S. His mother is a homemaker, and to his knowledge never worked for any government.¹⁰

Applicant has three stepsisters, age 27, 25, and 21, from his mother's second marriage. The oldest stepsister is a U.S. citizen, living and working in the U.S. His 25-year-old and 21-year-old stepsisters live in Qatar with his mother and stepfather. They are citizens of Yemen. They are students and do not work, but have worked part-time in the past. He has had little contact with these sisters most of his life, with the exception of their visit to the U.S. in 2006.¹¹

Applicant's father married his third wife after Applicant's parents divorced. Applicant's stepmother resides in Yemen. He does know her country of citizenship. Applicant has six stepbrothers, ages 22, 21, 20, 12, 8, and 5, and a stepsister age 9, through this marriage. The four younger children were born after Applicant immigrated to the U.S. He met these four half siblings for the first time in 2003. He has not had any regular contact with his seven half siblings since immigrating to the U. S. His stepmother did not encourage a relationship between him and her children. He believes that five of his step siblings are U.S. citizens because his father is a U.S. citizen, but has not provided evidence to support this belief.¹²

In late December 2003 and early January 2004, Applicant visited his family in Yemen and Qatar, remaining approximately 10 days in each country. During this trip, he stayed with his mother when in Qatar and with his father when in Yemen. He spent some time with all the members of his family while visiting. He obtained a Yemen national identify card for personal security while visiting Yemen. If challenged by anyone about who he was, he could show this card, which provided more protection from harm than any other identification he might possess.¹³

In March 2004, Applicant married a Russian immigrant, who is a resident alien. They have one son, age 3, who was born in the U.S. and is a U.S. citizen. Because it is easier for travel in Russia, he and his wife have decided to keep his son's Russian citizenship in addition to his U.S. citizenship. His wife's parents and 16-year-old brother reside in and are citizens of Russia. His mother-in-law works as a teacher in Russia. His

¹⁰GE 3, *supra* note 5, at 4; Tr. at 38, 65-68.

¹¹*Id.*

¹²GE 3, *supra* note 5, at 2-4; Tr. at 38, 41-42, 44-45.

¹³GE 3, *supra* note 5, at 7; Tr. at 39-42, 68, 78, 81-82.

father-in-law sells wood and cars. His brother-in-law is a student. His wife visited her family with their son in 2006. She stayed in Russia for three months. She now works as an office manager for a university. Applicant does not speak or understand Russian and his in-laws do not speak or understand English. He does not talk with his in-laws beyond hello and does not know how often his wife speaks with her parents.¹⁴

In the summer of 2006, physicians diagnosed Applicant with cancer. He underwent chemotherapy treatments in 2006. He told his mother about his medical diagnosis. She traveled to the U.S. with her two younger daughters. They lived with Applicant for three to four months, then returned home to Yemen. Since their return home, Applicant's contact with them has been limited.¹⁵

Applicant owns no property overseas, nor does he anticipate inheriting any property from either of his parents. He does not have any overseas bank accounts. None of his family members have been or are involved in politics. He has one Yemeni friend, who lives and works in the U.S. If his parents were threatened, he would tell the U.S. government ("my government"). He is not a member of any Yemeni cultural groups. His finances are good and he has no criminal record.¹⁶

Applicant's supervisor testified on his behalf. He praised Applicant's work skills and ethics. He described Applicant as a reliable professional, who would comply with the requirements of a security clearance. He does not know anything about Applicant's family in Yemen and Qatar and very little about his wife, as Applicant seldom discusses her at work. He recommends that Applicant be given a clearance. Applicant and his supervisor have been interviewed by the news media about the program in which they work. Applicant does not believe any members of his family saw the interview.¹⁷

I take administrative notice of the following facts. Yemen is a Republic and a developing country. Its government, based on a constitution, is comprised of executive legislative and judicial branches. Yemen's human rights record as it relates to detainees and prisoners is poor. Although the constitution provides for freedom of speech, religion, assembly and other freedoms, the government can and does ignore these constitutional rights frequently, in the interests of national security. The Yemeni government is making a concerted effort to arrest and punish, through its judicial system, members of al-Qaida, but is limited by the resources available for this effort. Recently, the Department of State issued a warning about the dangers of traveling in Yemen because of the recent resurgence of al-Qaida. Over the last 50 years, the relationship between Yemen and the U.S. has fluctuated. Currently, Yemen is an important partner in the global war on terrorism, and the defense relationship between the two nations is rapidly improving.

¹⁴GE 3, *supra* note 6, at 6; Tr. at 42-43, 49-52, 78-80.

¹⁵GE 3, *supra* note 6, at 1; Tr. at 52-54, 68-69.

¹⁶Tr. at 47, 62, 70, 89.

¹⁷App Ex A (Copy of newspaper article); Tr. at 23-28, 47, 54-55.

Qatar is a constitutional monarchy and independent state. It is a rapidly developing country in the Persian Gulf with strong and expanding relations with the U.S. Qatar plays an active role in the collective defense efforts of the Gulf Cooperation Council, and has signed defense pacts with the U.S., U.K., and France. Its official religion is Islam. Islamic law provides the foundation of the country's legal system. Generally, the Qatar government respects the rights of its citizens and visitors. Incidents of violence are rare, but a concern remains about the possibility of terrorist attacks.

Russia is a federation composed of 21 republics. Its president is elected. Russians do not have the same freedoms of speech and association known in the U.S. Russia is currently evolving from a centrally controlled economy to a free market economy. Russia has significant problems with human rights. For those traveling to and within Russia, problems can develop with leaving Russia, particularly if there are problems with the exit visa or a Russian passport. Relationships between the U.S. and Russia can be best described as tense, particularly on the issues of Iran, Iranian nuclear power, and arms sales to certain countries, Russia is an active collective of intelligence, including industrial technologies and intelligence, both surreptitiously and openly, through several methods, particularly the internet.

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

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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 ¶ 7 describes two conditions that are relevant to this case, could raise a security concern, and may be disqualifying:

(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;

(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;

(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;

His mother, stepfather, and two stepsisters are residents of Qatar. His mother and stepfather are also citizens of Qatar and his two stepsisters are citizens of Yemen. Until 2006, he had very limited contacts with his mother and his two stepsisters. When he became ill, he told his mother, who immediately came to the U.S. His mother and two stepsisters lived with him for three or four months. His immediate proximity to these family members for a substantial period of time raises security concerns under disqualifying condition AG ¶ 7(a).

His stepmother and seven step siblings from his father's third marriage reside in Yemen. His stepmother and at least two of these children are citizens of Yemen. His remaining siblings may be citizens of the U.S. and are citizens of Yemen. Since leaving Yemen in 1993, Applicant contacted these family members periodically by telephone and e-mail. Although his father is a U.S. citizen, he lives with his Yemeni family part of the time, raising the possibility of placing Applicant in a position of choosing between his father and the U.S. Security concerns may be raised under disqualifying condition AG ¶ 7(a) as to these family members.¹⁸

Applicant's wife is a citizen of Russia residing and working in the U.S. His father-in-law, mother-in-law and brother-in-law are citizens of and reside in Russia. His contact with his in-laws is limited to hello on the telephone as he does not speak Russian and they do not speak English. His in-laws have never visited his wife and the family in the U.S. On the other hand, his wife and son spent three months visiting her family in Russia in 2006. His son is developing close contacts with his Russian grandparents. His wife and son's close contacts with her family raises security concerns under the disqualifying conditions identified in AG ¶¶ 7 (b) and (d).

His brother resides in the U.S., and has for 14 years. His mother's oldest daughter is a U.S. citizen, living in the U.S. Because these family members reside in the U.S., a security concern is not raised.

AG ¶ 8 provides three conditions that could mitigate security concerns in this case:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

¹⁸The remaining disqualifying conditions are not applicable in this case.

(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;

(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.¹⁹

Applicant left Yemen over 14 years ago. Since his departure, his stepmother gave birth to four more children, whom he met for the first time when he visited Yemen four years ago. Since his visit, his contacts with these family members have been sparse and infrequent, in part because he never developed any strong family ties with them, as his stepmother did not encourage a relationship between he and her children. He has mitigated the government's concerns regarding these family members under AG ¶ 8 (c) because there is little likelihood that these contacts could create a risk for foreign influence or exploitation.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant obtained his U.S. citizenship one year after immigrating to the U.S. He travels on his U.S. passport. He completed high school and his college degree after arriving in the U.S. He met and married his wife in the U.S. and his son is a U.S. citizen. He follows the laws of the U.S. He has assimilated into the U.S. culture and is a responsible individual.

When he was diagnosed with cancer, he told his mother, a very natural act for a son to do. His mother came to the U.S. to provide emotional support to him during his

¹⁹The remaining mitigating conditions do not apply in this case.

chemotherapy treatments. By providing this information to his mother, Applicant demonstrated that he is emotionally close to his mother. Her act of traveling to the U.S. to provide support to him shows the strength of their bond, even though his mother did not raise him. With his two stepsisters living in his house for several months, he had time to develop a relationship with them that had not previously existed. Although he does not see his father or brother frequently, he is still emotionally bound to them. His son and wife live with him. His wife has strong ties with her parents, who live in Russia, as shown by her lengthy visit in 2006. Their decision to keep their son's Russian citizenship reflects the strength of her ties to her family and the heightened risk to him should she return to Russia for a visit or to live. For all these reasons, I conclude that Applicant has not mitigated the security concerns under Guideline B.

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:	AGAINST APPLICANT
Subparagraph 1.a-e:	Against Applicant
Subparagraph 1.f-o:	For Applicant
Subparagraph 1.p-q:	Against Applicant
Subparagraph 1.r:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge