



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



In the matter of:)
)
) ISCR Case No. 07-05425
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Jeffreys, Esquire, Department Counsel
For Applicant: Thomas S. Hartzell, Esquire

June 24, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be denied.

Applicant submitted his Security Clearance Application (SF 86), on November 9, 2005. On October 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B for Applicant. 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 October 25, 2007. He answered the SOR in writing through counsel on December 1, 2007, and requested a hearing

before an administrative judge. DOHA received the request in early December 2008. Department Counsel was prepared to proceed on December 20, 2008. DOHA assigned this case to another administrative judge on December 27, 2007. For case load management, this case was transferred to me on January 9, 2008. DOHA issued a notice of hearing on January 22, 2008, and I convened the hearing as scheduled on February 13, 2008. The government offered two exhibits (GE) 1 and 2, which were received and admitted into evidence without objection. Applicant and two witnesses testified on his behalf. He submitted ten exhibits (AE) V through EE, which were received and marked. AE W through EE were admitted into evidence without objection.¹

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on April 1, 2008. (Tr. 6-7.) At the hearing, I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. After consulting with counsel, Applicant affirmatively waived his right to 15 days notice. (Tr. 6-7.)

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding the following allegations:

¶ 1.l “Your three brother-in-laws and one sister-in-law are citizens and residents of Syria.”

¶ 1.m “Your two sister-in-laws are citizens of Syria and residents of Kuwait”

(Tr. 127-131, 134).

Applicant’s counsel objected to the motion, arguing that Department Counsel had not shown attenuation and lack of notice for failing to raise the allegation sooner. He also argued that the lack of notice denied Applicant his due process rights.

I granted Department Counsel’s request to amend the SOR and allowed the parties additional time to develop the evidence as noted above. Tr. 131-133,165. Applicant’s counsel decided to file a written response to the new allegations. On March 4, 2008, I received the response and three additional exhibits, which have been marked and admitted as AE FF through HH. Department Counsel requested additional hearing testimony from Applicant. DOHA issued a second Notice of Hearing on March 19, 2008. I convened the second hearing as scheduled on April 10, 2008. DOHA received the transcripts of the hearing (Tr.) on February 22, 2008 and April 18, 2008 respectively.

¹AE A through U are attached to his response to the SOR. AE V was not admitted into evidence.

Department Counsel submitted a written closing on April 24, 2008. Applicant's counsel submitted written closing argument on May 8, 2008. Department Counsel did not submit any rebuttal argument. The record closed on May 15, 2008.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Syria, Kuwait and Qatar, but withdrew its request that I take administrative notice of certain facts related to Saudi Arabia. (Tr. 13-18, 133-135.) The request and the attached documents were not admitted into evidence, but were included in the record as Administrative Exhibit I through XIII. Applicant's counsel argued that the facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated December 1, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.c, 1.e, and 1.g-1.j of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.d, 1.f and 1.k of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 44 years old, works for a Department of Defense contractor, as an electrical engineer. He began his employment with this contractor in August 2005. He completed his security clearance application shortly thereafter. Applicant previously held a security clearance in the late 1990s without incident.²

Applicant was born and raised in Syria. He immigrated to the United States (U.S.) in 1984 at the age of 20. He became a naturalized U.S. citizen in 1990. He travels on his U.S. passport. He attended a major university in the U.S., from which he received a Bachelor of Science degree in electrical engineering in 1995. He married his present wife in 1997 and has three children, two sons and a daughter. His children are U.S. citizens by birth and his wife is a naturalized citizen.³

Applicant's father became a U.S. citizen in 2004. He was born and raised in Syria and retains his Syrian citizenship. Applicant's mother, eight brothers, and two sisters were born in Syria and are citizens of Syria. One brother lives and works in Qatar as a chef. His other siblings live and work in Syria.⁴

²GE 1 (Applicant's security clearance application, dated November 14, 2005) at 2, 9, 32-33; Tr. 86-88.

³GE 1, *supra* note 1, at 2-4, 8, 14-16, 21-22; AE HH (Daughter's birth certificate).

⁴GE 1, *supra* note 1, at 19-28; Tr. 43-46, 54-79.

One of Applicant's sisters works as a secretary for the Syrian government and one brother works as an escort to foreign trucks, which travel through Syria from Turkey to Jordan. His father worked as an attorney for the Syrian government. His father retired from his government position and receives a pension from the Syrian government. His mother is a homemaker. His other sister is a homemaker married to a medical doctor. Two brothers are medical doctors, one brother is a music teacher, one brother works as a laboratory technician in a hospital, and two brothers are in the restaurant business.⁵

Under Syrian law, men are required to serve in the military. In the alternative, men can pay a specific monetary amount not to serve in the military. Applicant's father never served in the military because he paid the required fee. Four of Applicant's brothers served in the military for the minimum required service. None of his immediate family members made the military a career. Under a Syrian presidential law, Applicant was not required to serve in the Syrian military when he visited Syria for a few months.⁶

Applicant paid the costs of medical school for two brothers. He talks with his parents on the telephone twice a month. When he calls, he may talk with one of his siblings who live with his parents or are visiting. His telephone conversations with his siblings occur one to two times a year on birthdays and holidays. He does not regularly talk with his siblings, especially those who live away from his parents home. His family does not know where he works or what type of work he does as he does not discuss his work with his family when he visits them.⁷

Applicant's father wants to bring Applicant's mother and siblings to the United States. Several of Applicant's brothers have applied for visas to come to the U.S., but the U.S. consulate denied their requests because Applicant lived in the U.S. and the consulate expressed concern that Applicant's family members would not return to Syria. Applicant's father filed a request to immigrate to the U.S. on behalf of Applicant's mother in 2007 and all his siblings in 2006. The U.S. has not acted on the family's request to immigrate to the U.S.⁸

Applicant's mother-in-law, father-in-law, three-brothers-in-law, and three sisters-in-law were born in Syria and are citizens of Syria. Except for two sisters-in-law who live in Kuwait, his in-laws all live in Syria. His mother-in-law visited in 1999 to be with her daughter when their first child was born. None of his other in-laws have visited the U.S. and have not demonstrated an interest in moving to the U.S. Applicant's wife talks with her parents by telephone once a month. She talks with her siblings one or two times a year, when the sibling happens to be at her parents home. For a few months earlier this year, Applicant's wife communicated with one sister by e-mail on a frequent basis,

⁵*Id.*

⁶Tr. 97-102, 109.

⁷*Id.* 54-79, 90.

⁸AE A through AE K; AE L (Letter, dated August 16, 2006); AE N through AE U.

discussing children and babies. His wife started limiting the frequency of these communications because she had too much work to do at home raising her children.

Applicant traveled to Syria in 1997 to marry. He also traveled to Syria in 2000 and 2001 to visit his family and to introduce his family to his children. He attended the wedding of one of his brothers in Syria in 2003 and his sister-in-law's wedding in 2004. Each trip, he remained in Syria three to four weeks, except in 2004 when he remained in Syria for three months. Just before this trip, his then employer laid him off. He has not traveled to Syria since 2004. During these trips, he visits with all his family members in Syria and with his in-laws.⁹

Applicant's present supervisor and his section head testified on his behalf. Both have or do interact with Applicant at work, but not outside of work. Both recommend him for a security clearance.¹⁰

I take administrative notice of the following facts. Syria has an authoritarian government. Although the government has not formally stated support for Hezbollah or other terrorist groups, the government allows terrorist groups to establish their base of operations in Damascus and permits the entry of volunteer militant fighters into Syria. It allows Iran and other countries to transport weapons through its countryside to terrorists groups in nearby countries. In 2004, Syria began to scrutinize Arab males entering at the border. Syria treatment of arrested political activists and political detainees does not meet international human rights standards. Evidence regarding Syria's treatment of ordinary citizens does not exist. The evidence of record does not show or even hint at mistreatment of ordinary citizens. The U.S. and Syria have an uneasy relationship because of differences in policy over conflicts in the middle east. Currently, direct aid to Syria is banned.

Qatar became an independent state in 1971 and is a constitutional monarchy. The Qatar constitution provides its citizens with rights similar to those given to U.S. citizens. Freedom of the press is not the same as in the U.S., with the government maintaining tight controls over the media, but not individual expression of views. Women are allowed to run for elected office. Qatar and the U.S. have a strong and expanding relationship.

Kuwait is an oil-rich constitutional, hereditary emirate ruled by princes. Kuwait held free and fair elections in which women participated in 2006. Kuwait has many government sponsored social programs. Since 1991, Kuwait and the U.S. have had a strong relationship. Kuwait is an important partner against international terrorism, although it is reluctant to confront domestic extremists. Foreign workers comprise ninety percent of Kuwait's labor force.

⁹Tr. 137-146.

¹⁰*Id.* 27-40, 158-162.

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

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.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions could raise a security concern and may be disqualifying 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;
- (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; and
- (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 has a large family in Syria. He maintains a normal personal relationship with his family members who reside in Syria. His wife also maintains a normal personal relationship with her family in Syria. These relationships are not *per se* a reason to deny Applicant a security clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members.

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the governments of Syria, Kuwait, and Qatar. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). Applicant

paid for two brothers to go to medical school at a time when he had the financial resources. He regularly talks with his parents. He talks with his siblings when they are visiting his parents or answer the telephone when he calls. He and his wife visited family in Syria four times between 1999 and 2004. During these visits, they saw all his and her family members, except for family members who were living outside of Syria. His wife maintains regular contact with her family members. The contacts with family outside Syria are generally more limited. The governments of Qatar and Kuwait do not support terrorism and the active collection of intelligence or proprietary information. I do not find a heightened concern exists as to Applicant's family members in Qatar and Kuwait.

However, given the frequency of Applicant and his wife's contacts with their family members in Syria and Syria's strong support of terrorist activities, the government has established the existence of a heightened risk that the government of Syria could place pressure on Applicant to provide classified information by threatening harm to his family members. AG ¶ 7 (a), (b), and (d) apply.¹¹

In deciding if Applicant has submitted evidence of mitigation, under AG ¶ 8 (a), I must consider:

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 under AG ¶ 8(b), I must consider if

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. interests

Applicant's maintains a normal relationship with his family members. While this relationship is not a basis to deny him a security clearance, his burden of proof on mitigation requires more than statements about the limited scope of his conversations with family members and family members lack of knowledge about his employment. Two of his family members work for the Syrian government, a factor which works against mitigation. His father receives a pension from the Syrian government, another factor which supports a finding against mitigation. Because the Syrian government provides financial resources to these individuals, it raises the possibly that the Syrian government could pressure them for classified information from Applicant, should it learn about Applicant's work.

¹¹ISCR Case No. 07-02485 (App. Bd. May 9, 2008); ISCR Case No. 07-02715 (App. Bd. May 21, 2008).

Finally, ¶ 8 (c) permits mitigation if the “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’s twice a month contacts with his parents are not casual and infrequent. In contrast, his once or twice a year contacts with his siblings qualify as casual and infrequent. His very short and brief telephone calls with his in-laws are casual, but may not be infrequent. His wife’s contacts with her parents and at least one sister are not casual and infrequent. He does visit with all family members who live in Syria when he travels to Syria. Overall, his contacts and his wife’s contacts with family members do not allow for mitigation.

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) 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 common sense 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. After arriving in the U.S. in 1984. Applicant chose to remain in this country. Applicant became a U.S. citizen nearly 19 years ago. During his more than 23 years as a U.S. resident and citizen, he has complied with its laws and lived a quiet and unassuming life. His children are U.S. born and raised. His wife is now a U.S. citizen. He clearly has established strong connections to the U.S. His work recommends him for a clearance, an indication of their trust in him.

His family in Syria, however, remains a serious concern, particularly since Syria strongly supports the terrorist activities in the middle east. Syria and the U.S. have a strained relationship because of their differing policies towards terrorist. Three of Applicant’s family members rely on the Syrian government for income, a fact which the Syrian government could use to coerce them into forcing Applicant to reveal classified information. Applicant’s father applied for immigrant status for all his children in 2006 and his wife in 2007. The U.S. government has not yet approved the family’s request to immigrate. As long as Applicant’s family remains in Syria, a concern exists about the

ability of the Syrian government to coerce, pressure or exploit Applicant. His contacts with his family reflect a close personal relationship with his family in Syria, which is sufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	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