



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



In the matter of:)	
)	
)	ISCR Case No. 14-06675
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

12/23/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline B (foreign influence). Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 23, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B. This 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 adjudicative guidelines (AG) implemented on September 1, 2006.

On April 8, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 25, 2015. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on July 8, 2015. The hearing was held as scheduled on July 23, 2013. At the hearing, Department Counsel offered Government Exhibit (GE) 1. Applicant testified, called five witnesses, and offered Applicant Exhibits (AE) A through NN. All exhibits were admitted into evidence without objection. Applicant's Counsel had no objection to Department Counsel's administrative notice request concerning facts about Yemen (Hearing Exhibit (HE) 1) and that request was granted. DOHA received the hearing transcript (Tr.) on July 31, 2015.

Findings of Fact

SOR and Applicant's Answer to the SOR

The SOR contained three Guideline B allegations. They asserted that Applicant's mother, father, two brothers, and three sisters are citizens and residents of Yemen (SOR ¶ 1.a); that his stepmother and stepsiblings are citizens and residents of Yemen (SOR ¶ 1.b); and that he served in the Yemeni military (SOR ¶ 1.c). In his Answer to the SOR, Applicant admitted each allegation with comments. His admissions are incorporated as findings of fact.¹

Applicant's Background and Foreign Contacts

Applicant is a 33-year-old computer systems engineer. He has been working for a defense contractor since February 2009. He was born in Yemen, graduated from high school there, entered the United States in 2004, and became a U.S. citizen in 2009. He is married and has two children, ages 6 and 8. His wife and children are U.S. citizens. This is the first time that he is seeking to obtain a security clearance.²

After graduating from high school, Applicant was obligated to serve one year in the Yemeni military. However, instead of serving in the military, he registered as an assistant to his uncle who was a brigadier general in the Yemeni military. Applicant never attended basic military training, never was issued a uniform, and never reported to a military base. While registered as his uncle's assistant, he received \$70 per month from the Yemeni Government. He indicated that registering under a military official's name was a common practice for avoiding military service in Yemen. He stated that his uncle retired from the Yemeni military a couple of years ago. He last talked to his uncle when he visited Yemen in 2011.³

Applicant entered the United States on a student visa at age 22. He registered for the U.S. selective service soon after arriving here. Another uncle who was then a

¹ SOR and Applicant's Answer to the SOR.

² Tr. 20-24, 32-36, 46-47, 114; GE 1; AE B, D, E.

³ Tr. 24-32, 43-44, 50-57, 92. Applicant referred to his Uncle's intervention as "signing up under his uncle's name."

student in the United States assisted Applicant in getting admitted into college. As a student, Applicant received educational assistance from the Yemeni Government for four years. The educational assistance ranged from \$320 to \$450 per month. He earned a bachelor's degree from a U.S. university in 2009 and a master's degree in 2012. He worked in a clothing store while attending college. He obtained student loans from U.S. institutions, but has already repaid those loans. The uncle who helped him get admitted into college has returned to Yemen. Applicant remains in email contact with that uncle.⁴

Applicant met his wife in the United States. Although she was born in Yemen, she is a U.S. citizen by birth because her father was a U.S. citizen. Applicant and his wife married in the United States in 2005. Her mother is deceased. Her father resides in the United States. Her two brothers and two sisters are citizens and residents of the United States. She has a stepsister who resides in Yemen.⁵

Applicant and his wife purchased a home in the United States for about \$90,000 in 2008. His wife does not work outside the home. Their children were born in the United States. One of his brothers is attending college in the United States and resides with him.⁶

Applicant's mother, father, one brother, and three sisters are citizens and residents of Yemen. His father is a well-known lawyer. His mother is unemployed. His parents live separately. He talks to his mother weekly over an internet connection. His mother has visited him in the United States. At times when talking with his mother, he will occasionally talk to his brother who lives in Yemen. This brother is an accountant who worked for a government agency responsible for security matters. Applicant did not know how high up in the government agency his brother worked. He talks to his father about once every two or three months. His sisters are housewives. His sister's husbands are a private banker, a judge, and an electrical engineer working for a Yemeni utility company. He did not know at what level the judge worked in the Yemeni Government. He talks with his sisters over the internet.⁷

Applicant's father has two wives. Applicant has a stepmother and stepsiblings. He last talked to his stepmother when he visited Yemen in 2011. He indicated that he is not close to his stepsiblings and stated he did not get along with them. He has not had any contact with his stepsiblings since he last visited Yemen. One of his stepbrothers is an attorney. Another stepbrother moved to Saudi Arabia, and Applicant had no further knowledge about him. A third stepbrother lives in Yemen, but Applicant has not had any contact with him for years. A stepsister is not married and works as a teacher.⁸

⁴ Tr. 20-21, 27-32, 47-50, 56-59, 69-72; GE 1; AE A, GG-JJ.

⁵ Tr. 20-21, 27-32, 47-50, 56-59; GE 1; AE C.

⁶ Tr. 36-37, 39-40, 42, 68-69, 72-73; GE 1; AE D-H.

⁷ Tr. 37-38, 42-44, 62-63; 72-74, 91-95; GE 1.

⁸ Tr. 59-61, 74-83.

Applicant surrendered his Yemeni passport to his company's facility security officer. Since becoming a U.S. citizen, he has not used his Yemeni passport and used only his U.S. passport to travel overseas. His Yemeni passport has since expired. He traveled to Yemen in 2007 and 2011 to visit family. He owns two undeveloped plots of land in Yemen that he purchased before becoming a U.S. citizen. Both plots of land were purchased for less than \$10,000.⁹

Applicant initially testified that his family was not close to the ongoing armed conflict in Yemen. He later indicated that his mother heard airplane sounds and gunfire on a routine basis.¹⁰

Character Evidence

Applicant's work evaluation for 2015 reflected that he received a score of 3.83 on a scale of 1 to 5. A score of 3.83 falls between the "meets expectations" and "exceeds expectations" categories. He is described as a trusted employee who is progressing in a project manager internship. His earlier evaluations also reflected that he met or exceeded expectations. He has completed numerous training and professional development programs.¹¹

A female friend testified that Applicant is a good father who is committed to his family. She indicated that Applicant places his children first and everything else behind them. She also noted that he is planning to buy a better house in the United States and is committed to staying here. This witness was originally from Yemen and knew of Applicant's family there. She indicated that his family moved to the Yemeni countryside to avoid the armed conflict.¹²

Applicant's supervisor testified that Applicant is a good worker. The supervisor had no concerns about granting Applicant a security clearance. A former supervisor described Applicant as a great employee and family man. She testified that he worked long hours and she would like for him to work for her again. She had no concern about divided loyalty due to Applicant having family members living in Yemen. She indicated that he has chosen to make his life in the United States.¹³

⁹ Tr. 63-68, 86-91; GE 1.

¹⁰ Tr.85, 88-89.

¹¹ AE S-FF.

¹² Tr. 101-108.

¹³ Tr. 109-123.

A coworker indicated that Applicant was a family man. Another coworker described him as a good worker who is very meticulous. He also indicated that he was honest and trustworthy.¹⁴

Yemen

The Republic of Yemen was formed in 1990. The country continues to struggle with issues over unification. The United States and Yemen have a strong and growing partnership. Since 2011, the United States has provided Yemen more than \$800 million in assistance. Terrorism and civil unrest are significant problems in Yemen. In January 2015, the Yemeni President and his cabinet reportedly resigned amid the growing violence. In February 2015, the U.S. Embassy in Sana'a suspended its operations and the embassy staff was temporarily relocated due to an uncertain security situation and renewed violence.¹⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG 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 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. 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,

¹⁴ Tr. 125-139.

¹⁵ AE KK-NN; HE 1.

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following disqualifying conditions potentially apply:

- (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
- (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone could be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. In this case, Applicant's mother, father, one brother, three sisters, stepmother, and stepsiblings are citizens and residents of Yemen. His continuing, close contacts with family members are sufficient to raise Guideline B security concerns.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an unstable government or subject to terrorist activity. Terrorism and civil unrest are significant problems in Yemen. This places the burden of persuasion on Applicant to demonstrate that his contacts in Yemen do not pose a security risk and that he will not be placed in a position of having to choose between his loyalty to the U.S. and his family members. With Yemen's unstable government and the violent insurgency being conducted within its borders, it is conceivable that Applicant's family members could be vulnerable to coercion. The dangerous circumstances that exist in Yemen create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. I find that AG ¶¶ 7(a) and 7(b) apply in this case.

SOR ¶ 1.c alleged that Applicant served in the Yemeni military. Record evidence, however, established that he did not serve in the Yemeni military, but avoided such service by registering as an assistant to his uncle who was a brigadier general in the Yemeni military. I find in favor of Applicant on SOR ¶ 1.c.

I have analyzed all of the facts and considered all of the mitigating conditions under AG ¶ 8. The following mitigating conditions potentially apply:

(a) the nature of the relationship 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 and interests of the U.S.;

(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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant maintains close contact with his mother, father, brother, and sisters in Yemen. His father is a well-known attorney. His uncle is a retired Yemeni general, his brother works for a Yemeni Government agency, and his brother-in-law is a judge. The activities or governmental positions of these family members undercut the application of AG ¶ 8(a). Neither AG ¶ 8(a) or AG ¶ 8(c) apply to SOR ¶ 1.a.

On the other hand, Applicant has minimal contact with his stepmother and stepsiblings. He last had contact with them when he visited Yemen in 2011. His contact with his stepmother and stepsibling is so casual and infrequent that there is little likelihood that it would create a risk of foreign influence or exploitation. AG ¶ 8(c) applies to SOR ¶ 1.b.

Applicant has resided in the United States since 2004. He became a U.S. citizen in 2009. He is married to a U.S. citizen. His children are U.S. citizens. He owns a home in the United States. He has been working for the same company since 2009. He has established roots in the United States. Nevertheless, he maintains close family contacts in Yemen and his mother appears to live near the armed conflict in that country. His family contacts in Yemen are significant and create a potential conflict of interest. He should not be placed in a position where he may have to resolve a conflict between the interests of his family in Yemen and the interests of the United States. AG ¶ 8(b) does not apply to SOR ¶ 1.a.

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 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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a devoted husband and father. He is a trusted employee. He has established roots in the United States. Nevertheless, the complicated state of affairs in Yemen places a significant burden of persuasion on Applicant to demonstrate that his family members in that country do not pose an unacceptable security risk. He has failed to meet that burden.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign influence guideline.

Formal Findings

Formal findings 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
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	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.

James F. Duffy
Administrative Judge