



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



In the matter of:)
)
) ISCR Case No. 17-03266
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

09/07/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence security concerns relating to her connections to Jordan and United Arab Emirates (UAE). She contributed to U.S. national security for seven years by serving as a linguist in the Middle East. Eligibility for access to classified information is granted.

History of the Case

On May 31, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On November 15, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for her, and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under the foreign influence guideline.

On December 27, 2017, Applicant responded to the SOR and requested a hearing. (Transcript (Tr.) 64; HE 3) On March 16, 2018, Department Counsel was ready to proceed. On April 26, 2018, the case was assigned to me. On May 23, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 12, 2018. (HE 1) Applicant's hearing was held as scheduled. Applicant's counsel indicated there were no issues regarding notice. (Tr. 9)

During the hearing, Department Counsel offered two exhibits; Applicant offered 19 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 10-13; GE 1-2; Applicant Exhibit (AE) A-AE S). On June 21, 2018, DOHA received a transcript of the hearing.

Procedural Ruling

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Jordan and UAE with supporting attachments. (Tr. 10-12; HE 5-HE 6) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to me taking administrative notice of the proffered documents and obtaining information from the Department of State website. (Tr. 16) Department Counsel did not object to information from the State Department website. Department Counsel's requests for administrative notice are granted. (Tr. 12)

The first paragraph and the last paragraph of the Jordan section are taken from U.S. State Department Background Notes, <https://2001-2009.state.gov/p/sca/ci/af/>. (Tr. 16-17) The other paragraphs regarding Jordan and UAE are from Department Counsel's administrative notice requests (quotation marks, bullet symbols, and internal footnotes are omitted).

Findings of Fact¹

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.f. (HE 3) She also provided mitigating information. (HE 3) Her admissions are incorporated herein as

¹ The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information.

findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 51-year-old linguist, and a DOD contractor has employed her for seven years in a Middle Eastern country primarily in support of the U.S. Army. (Tr. 14, 16-17) She grew up in Kuwait, and moved to Jordan with her family when she was 13 years old. (Tr. 37) Her father was a teacher. (Tr. 38) In 2015, she received a bachelor's degree in human relations from an Internet-based U.S. university. (Tr. 14-15; AE D; AE G; AE H) She was married from 1996 to 2000 and from 2006 to 2010. (Tr. 15, 38) She does not have any children. (Tr. 16) Her second marriage was to a U.S.-born citizen. (Tr. 16, 50) Her biography, resume, and SCA provide further details of her background and employment history. (GE1; AE D; AE E)

The SOR alleges and the record establishes: (1) Applicant's mother, brother, and two sisters are citizens and residents of Jordan. (Tr. 20); (2) Her brother is a citizen of Jordan and a resident of UAE. (Tr. 31); (3) She provides about \$350 monthly to her mother. (Tr. 22-24); and (4) She provides about \$250 monthly to her brother who resides in Jordan to help pay for the education of his children. (Tr. 28-29, 45). None of her relatives work for a foreign government. (Tr. 22, 27, 29)

Applicant's parents were born and raised in Israel. (AE D) Her father had two bachelor's degrees and a master's degree. (AE D) In 2007, her father passed away. (AE R) In addition to the relatives discussed in the SOR, Applicant has sisters-in-law and nieces and nephews living in Jordan and UAE. (Tr. 28, 34, 45-46)

From 2001 to 2006, Applicant was employed in Qatar. (Tr. 39) In 2006, Applicant came to the United States because she was married to a U.S. citizen. (Tr. 18) She lived in the United States from 2006 until 2010. (Tr. 18, 40) From 2008 to 2010, a DOD contractor employed her as a linguist and role player in the United States. (Tr. 41) In 2009, she became a U.S. citizen. (Tr. 17; AE J) She has been consistently deployed to the Middle East from 2011 to present, but not in Jordan or UAE. (Tr. 19, 42) She planned to return to the Middle East the day after her hearing. (Tr. 19) She has held a U.S. security clearance since 2010. (Tr. 20)

Applicant communicates several times a month with family members in Jordan, including her mother and siblings. (Tr. 21, 25, 31, 33, 44-45)² She most recently visited her mother and other family members in Jordan in 2016. (Tr. 21, 26, 44) She most recently visited her brother in UAE in 2016. (Tr. 32) Her sisters-in-law and sisters are not employed outside their homes. (Tr. 32-33)

Applicant's net monthly income is \$4,000. (Tr. 46) Her only foreign bank account was located near her employment location, and she opened the account to enable her employer to pay her salary. (Tr. 47-48) She said the foreign bank account was a

² The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

requirement of her employer at that time. (Tr. 48) She currently does not have a foreign bank account because her employer does not require her to have one. (Tr. 48) She has a bank account in the United States. (Tr. 48) She does not own a home in the United States. (Tr. 49) She has more than \$7,000 in her employer-sponsored 401(k) account. (AE Q)

Applicant has an uncle and cousins that live in the United States. (Tr. 50) In 2011, she renounced her Jordanian citizenship. (Tr. 51-52; AE L) She is proud to be an American citizen and employee of a DOD contractor. (Tr. 52)

Character Evidence

Applicant provided character statements from one staff sergeant, two sergeants first class, one chief warrant officer 3, two captains, five majors, and one lieutenant colonel who served with Applicant during their deployments to a Middle Eastern country.³ The general sense of their statements is that Applicant's duty performance demonstrated professionalism, trustworthiness, competence, loyalty, dedication, and diligence. She provided crucial support to the mission accomplishment of the U.S. Army in the Middle Eastern country. Ten certificates laud her contributions to U.S. Army units as a linguist from 2011 to 2018.

Jordan

In 2013 and 2014, the U.S. provided Jordan \$2.25 billion in loan guarantees, allowing Jordan access to affordable financing from international capital markets. The U.S.-Jordan free trade agreement (FTA), the U.S.'s first FTA with an Arab country, has expanded the trade relationship by reducing barriers for services, providing cutting-edge protection for intellectual property, ensuring regulatory transparency, and requiring effective labor and environmental enforcement. The United States and Jordan have an "open skies" civil aviation agreement; a bilateral investment treaty; a science and technology cooperation agreement; and a memorandum of understanding on nuclear energy cooperation. Such agreements bolster efforts to help diversify Jordan's economy and promote growth. Jordan and the United States belong to a number of the same international organizations, including the United Nations, International Monetary Fund, World Bank, and World Trade Organization. Jordan also is a Partner for Cooperation with the Organization for Security and Cooperation in Europe.

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein.

The U.S. Department of State assesses the threat of terrorism in Jordan as high; with the capital of Amman currently assessed as a high-threat location for terrorist activity directed at or affecting official U.S. Government interests. Transnational and indigenous terrorist groups in Jordan have demonstrated the capability to plan and

³ The character statements referenced in this paragraph are at AE N and the certificates are at AE P.

implement attacks. Violent extremist groups in Syria and Iraq, including the Islamic State of Iraq and the Levant (ISIL) (also known as the Islamic State of Iraq and Syria, or ISIS) and Jabhat al-Nusra, have conducted attacks in Jordan and continue to plot against local security forces, U.S. and Western interests, and soft targets such as high-profile public events, hotels, places of worship, restaurants, schools, and malls. Jordan's prominent role in the effort to defeat ISIS, and its shared borders with Iraq and Syria, increase the potential for future terrorist incidents.

Although Jordan remained a committed partner on counterterrorism and countering violent extremism in 2016, numerous terrorist incidents reflect the current security situation in Jordan: throughout 2017, multiple vehicle-borne improvised explosive devices detonated in and around a refugee camp in Syria near the Jordanian border; and in October 2017, two homemade explosive devices were found in another refugee camp in Jordan. Also in October 2017, the State Security Court prosecuted six people for sympathizing with ISIS, after they created social media accounts to find Jordanian supporters for ISIS and promote terrorist activity. In September 2017, the State Security Court charged 16 people with a terrorist plot involving the use of automatic weapons to carry out terrorist attacks against public security services; and the Jordanian General Intelligence Directorate arrested a 10-person ISIS cell that was planning to attack security forces and tourist locations using explosive suicide belts. Throughout 2017, there were numerous instances of extremists posting pro-ISIS videos or statements on social media.

U.S. involvement in Iraq and Syria, and the U.S. Government's policies on Israel, have fueled anti-American feelings in Jordan. Recent surveys reflect that over 80% of the Jordanian population has an unfavorable view of the U.S. Government. The U.S. Department of State has assessed Amman as being a high-threat location for political violence directed at or affecting official U.S. Government interests. In December 2017, protests took place at the U.S. Embassy for 27 days after the announcement that the U.S. Embassy in Tel Aviv would move to Jerusalem.

As a regional leader in the Global Coalition to Defeat ISIS, Jordan played an important role in Coalition successes in degrading the terrorist group's territorial control and operational reach. During 2016, Jordanian authorities took legal action against numerous individuals accused of terrorism under Jordanian law. On July 13, 2016, the Jordanian State Security Court filed charges against 21 suspected ISIS affiliates in connection with the pre-emptive March raid on an alleged ISIS safe house in Irbid. The Department of State assesses that the potential for terrorist activity is heightened as Jordan participates in the coalition against ISIS. Extremist groups have carried out terrorist activities against U.S. and Jordanian government targets in Jordan.

Terrorist groups often do not distinguish between U.S. Government personnel and private U.S. citizens, and may target areas frequented by Westerners, such as tourist sites, hotels, restaurants, shopping malls, and transportation hubs.

According to the Department of State 2017 Human Rights Report, Jordan's most significant continuing human rights problems include allegations of torture by security

and government officials; arbitrary arrest and detention, including of activists and journalists; infringements on privacy rights; restrictions on freedom of expression; and restrictions on freedom of association and assembly. Impunity remained widespread, and the government did not take sufficiently strong steps to investigate, prosecute, or punish officials who committed abuses.

The Jordanian SSC took legal action against numerous individuals deemed to be terrorists under local law, including the arrest and prosecution of men accused of seeking to join Al-Nusra Front (ANF) and ISIS. Other arrests and prosecutions involved supporting/recruiting for ISIS and attempted travel to/from Syria in support of extremist activities and also for “propagating ISIL ideology,” a charge often used for online activity.

United Arab Emirates (UAE)

The Trucial States of the Persian Gulf coast granted the United Kingdom control of their defense and foreign affairs in 19th century treaties. In 1971, six of these states - Abu Dhabi, ‘Ajman, Al Fujayrah, Ash Shariqah, Dubayy, and Umm al Qaywayn merged to form the United Arab Emirates (UAE). They were joined in 1972 by Ra’s al Khaymah.

The UAE in recent years has played a growing role in regional affairs. In addition to donating billions of dollars in economic aid to help stabilize Egypt, the UAE was one of the first countries to join the Defeat-ISIS coalition, and is a key partner in a Saudi-led military campaign in Yemen.

The UAE’s State Security Court heard more than three dozen terrorism-related cases in 2016, making it the most active year to date in terrorism prosecutions. The majority of prosecutions were against alleged affiliates of ISIS, AQAP, al-Nusrah Front (al-Qa’ida’s affiliate in Syria), and Hizballah.

In March 2016, the State Security Court concluded a terrorism trial that involved the Shabab al Manara group and included 41 defendants, 38 of whom were Emirati. The defendants were prosecuted for their association with terrorist groups, including ISIS and al-Qa’ida, and for planning terrorist attacks in the UAE. The State Security Court, convicted numerous defendants, and ordered the dissolution of the group, the closure of its headquarters, the confiscation of electronic devices used in cybercrimes, weapons, ammunition, materials used in making explosives, and wireless devices, and the closure of any affiliated websites.

The UAE is a regional and global financial and transportation hub, and terrorist organizations exploit it to send and receive financial support. Operational capability constraints and political considerations sometimes prevented the UAE government from immediately freezing and confiscating terrorist assets absent multilateral assistance. Exploitation by illicit actors of money transmitters, including licensed exchange houses, hawalas, and trading firms acting as money transmitters, are a significant concern. Additionally, international human rights organizations claim that the UAE uses its counterterrorism laws as cover to pursue cases against political dissidents and activists.

As the following examples demonstrate, through transshipment and diversion of United States goods, dual-use, military, and electronic components and internet technology have passed through the UAE and UAE-owned businesses on their way to Iran and Syria.

Between 2005 and 2007, United States companies were misled into shipping aircraft parts to the UAE that were actually destined for customers in Iran. Iran is a state sponsor of terrorism. In 2008, United States dual-use and military components were funneled through the UAE to Iran and ended up in improvised explosive devices (IEDs) used against Coalition Forces in Iraq and Afghanistan.

In 2009, a United States company conspired to export a steel bar peeling machine to Iran, through the UAE, in violation of the Iran embargo. In 2014, a UAE company violated its reseller agreement with a United States software company and illegally diverted internet-monitoring technology to Syria. Syria is a state sponsor of terrorism. In 2016, high-tech electronic components from United States companies were illegally transshipped through the UAE on their way to Iran.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7.

See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The SOR alleges and the record establishes Applicant's mother, brother, and two sisters are citizens and residents of Jordan. Her brother is a citizen on Jordan and a resident of UAE. She provides about \$600 monthly to her family in Jordan which is less than 20 percent of her income. None of her relatives work for a foreign government. Applicant has frequent contacts with her mother and siblings, who are citizens and residents of Jordan and UAE. Her frequent contacts and financial support are a manifestation of her care and concern for her relatives living in Jordan and UAE.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

There are widely documented safety issues for residents of Jordan and UAE primarily because of terrorists and insurgents. Applicant has voluntarily shared in the dangers of service in the Middle East on behalf of the DOD for more than seven years, and she is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in the Middle East. Thousands of United States and coalition armed forces and civilian contractors serving in the Middle East are targets of terrorists.

The mere possession of close family ties with relatives living in Jordan or UAE is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).⁴

There is a rebuttable presumption that a person has ties of affection for, or obligation to, her or her immediate family members, and this presumption includes in-

⁴ In accordance with "well established DoD policy [Applicant and her family's] religious affiliation play[ed] no part" in this decision. ISCR Case No. 08-06795 at 6 n. 3 (App. Bd. May 25, 2012).

laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). The in-law presumption concerning foreign influence is not relevant here because Applicant is not married.

The DOHA Appeal Board has indicated for Guideline B cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another factor is the nature of a nation’s government’s relationship with the United States. These criteria are relevant in assessing the likelihood that an applicant’s family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Jordan and UAE with the United States, and the situation in those countries, places a significant burden of persuasion on Applicant to demonstrate that her relationship with any family member living in those countries does not pose a security risk. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Jordan or UAE.⁵

Guideline B security concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national

⁵ The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant’s immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant’s ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Jordan or UAE seek or have sought classified or economic information from or through Applicant or her family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Jordan and UAE have a problem with terrorism. Applicant's family in Jordan and UAE "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him [or her]." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with relatives who are living in Jordan and UAE or visiting those countries create a potential conflict of interest because terrorists could place pressure on her family in Jordan or UAE in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with family in Jordan and UAE and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(b) and 8(f) apply. Applicant has frequent contact with her relatives, who are citizens and residents of Jordan and UAE. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant resided in the United States for about four years (2006 to 2010).⁶ In 2009, she became a U.S. citizen. She has a bank account and 401(k) account in the United States. She

⁶ ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as [Directive] ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")

Id. at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

provides \$600 monthly to family in Jordan, which is less than 20 percent of her income. Her employment for seven years as a linguist on behalf of the United States in a Middle East country is a strong indication of her U.S. connections.

Applicant's years of support to the DOD as a linguist and cultural advisor, including the dangers that service entailed, weigh towards mitigating security concerns. Applicant is currently serving in the Middle East providing critical assistance to U.S. Armed Forces. She has offered to continue to risk her life to support the United States' goals in the Middle East. She has shown her patriotism, loyalty, and fidelity to the United States during her seven years of support to DOD while serving in the Middle East.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his [or her] ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006). . . . See also ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012).

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with relatives who are citizens and residents of Jordan and UAE. Her mother and siblings, and her siblings' families reside in Jordan and UAE. Like every other resident of those countries, they are at risk from terrorists.

It is important to be mindful of the United States' investment of manpower and money in Jordan and UAE, and Applicant has supported U.S. goals and objectives in the Middle East. Applicant's family living in Jordan and UAE are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to her relatives living in Jordan and UAE from lawless elements in those countries.

In sum, Applicant's connections to her relatives living in Jordan and UAE are less significant than her connections to the United States. Her employment in support of the U.S. Government, performance of linguist duties in the Middle East, and U.S. citizenship are important factors weighing towards mitigation of security concerns. She has not visited her relatives in Jordan or UAE for two years. She renounced her Jordanian citizenship. Her connections to the United States taken together are sufficient to overcome the foreign influence security concerns under Guideline B.

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(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 51-year-old linguist, and a DOD contractor has employed her for seven years in a Middle Eastern country primarily in support of the U.S. Army. In 2015, she received a bachelor's degree in human relations from an Internet-based U.S. university. She is not married, and she does not have any children.

Applicant has frequent contact with her family, who are citizens and residents of Jordan and UAE. She provided \$600 monthly in financial support to her family in Jordan. Her frequent contacts with family in Jordan and UAE are a manifestation of her care and concern for her relatives living in those countries. There is no evidence that her relatives residing in those countries are government employees or military personnel. Those relationships raise important foreign influence security concerns, and they must be balanced against her connections to the United States.

Applicant served as a linguist, translator, or cultural advisor for seven years in the Middle East. She provided character references from personnel who served with her in the Middle East including from three noncommissioned officers, one chief warrant officer, and 8 commissioned officers. The general sense of their statements is that Applicant's duty performance exhibited professionalism, trustworthiness, competence, loyalty, dedication, and diligence. She provided crucial support to mission accomplishment. Ten certificates laud her contributions to U.S. Army units as a linguist from 2011 to 2018.

Service with U.S. forces in the Middle East entails risk. Her voluntary acceptance of personal risk on behalf of the United States increases the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit her. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Her past honorable service as a linguist weighs heavily towards mitigating foreign

influence security concerns. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting “Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.”). While Applicant did not serve as a translator in Iraq or Afghanistan, she served with U.S. forces in the Middle East, and that service poses more risk to her of death or serious injury to her from terrorists than in many other areas of the world.

A Guideline B decision concerning Jordan and UAE must take into consideration the geopolitical situation and dangers there.⁷ Jordan and UAE are dangerous places because of the potential for violence from terrorists. Terrorists continue to threaten the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The Jordan and UAE governments do not fully comply with the rule of law or protect civil liberties in many instances. The United States and those two governments are allies in the war on terrorism.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

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
Subparagraphs 1.a through 1.f:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge

⁷ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).