



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



In the matter of: )  
)  
) ISCR Case No. 17-01969  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

05/07/2019

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**Decision**

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Curry, Marc, Administrative Judge:

Applicant mitigated the foreign influence security concerns generated by his family members who are residents of the West Bank. Clearance is granted.

**Statement of the Case**

On January 3, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017. The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue Applicant’s security clearance. It recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On January 22, 2018, Applicant responded to the SOR, admitting all of the allegations, and requested a hearing. The case was assigned to me on January 16, 2019. On February 13, 2019, DOHA issued a notice of hearing, scheduling the case for March 7, 2019. The hearing was held as scheduled. At the hearing, Department Counsel submitted two documents for admission that I marked as Government Exhibits (GEs) 1 and 2. Applicant submitted 13 exhibits, incorporated into the record as Applicant's Exhibits (AE) A through O.

I took administrative notice, at Department Counsel's request, of the facts encapsulated within seven source documents, identified as Hearing Exhibits (HE) I through HE VII. Also, I incorporated Department Counsel's corresponding memo and Department Counsel's discovery letter to Applicant, as HE VIII and HE IX, respectively. The transcript was received on February 26, 2019.

### **Findings of Fact**

Applicant is a 52-year-old married man with a 13-year-old daughter. He was born and raised in the West Bank, which was then part of Jordan, and is now governed by the Palestinian Authority. He earned a bachelor's degree and a master's degree in the field of electrical engineering from a foreign university before immigrating to the United States to pursue a doctorate. (Tr. 71) He successfully obtained the doctorate in 1993. (Tr. 71) He became a naturalized U.S. citizen in 1997. (GE 2 at 1)

Applicant is a research physicist and a university professor. He is highly respected in his field. According to his current supervisor, he is an outstanding scientist. (Tr. 35) His previous supervisor characterized him as a tremendously talented, yet humble individual who puts the accomplishments of his subordinates ahead of his own. (Tr. 26) According to a friend and former fellow Ph.D candidate whom Applicant met in 1992, Applicant is "very dependable, [and] very reliable." (Tr. 45) In 2017, Applicant's university granted him the "Excellence in Teaching Award" for his "Excellence in Instruction and Dedication." (AE J)

Applicant's wife immigrated to the United States from Jordan with her family in 1976 when she was three years old. (Tr. 72) She became a naturalized U.S. citizen in 1984. (AE A) Applicant's daughter is a natural-born U.S. citizen.

Applicant's father is deceased. Applicant's mother, a homemaker, is a Jordanian citizen and resident of the West Bank. Applicant travels to the West Bank approximately every other year to visit her, staying three to four weeks per visit. (Tr. 81) He also financially supports her by sending \$1,200 monthly. (Tr. 87) He feels a moral obligation to support his mother. (Tr. 86)

Applicant has three brothers (B1, B2, B3) and three sisters (S1, S2, S3) who are Jordanian citizens and residents of the West Bank. B1 is a teacher. (GE 2 at 4) His wife, Applicant's sister-in-law, is the principal at the school where he teaches.

B2 is a plumber. (Tr. 94) His marital status is unknown from the record. B3 is a sanitation technician, and his wife is a homemaker. (Tr. 94) S1 is a homemaker, married to a doctor. They are U.S. citizens who lived in the United States before returning to the West Bank to care for S1's elderly parents in-law. (Tr. 94) S2 is a teacher. Her husband is an electrical engineer. (Tr. 96-97) S2 has dual U.S. citizenship and has spent part of her life living in the United States. S3 is a homemaker. Her husband is a shopkeeper. (Tr. 98).

Applicant speaks with his siblings twice per year on religious holidays. (Tr. 89) They exchange monetary gifts on holidays. Applicant sees them on his trips to the West Bank when he visits his mother.

Applicant owns no property in the West Bank. He has \$13,000 deposited in a checking account, and \$1.1 million deposited in two saving accounts in the United States. (AE N)

Applicant is a philanthropist who gives thousands of dollars annually to charities and other non-profit entities. (AE F – AE H) He is a respected elder at his place of worship who actively participates in interfaith organizations dedicated to promoting religious tolerance. The spiritual leader of his place of worship testified that he would trust Applicant with his wife, his children, and his life. (Tr. 63)

### **Administrative Notice**

The West Bank refers to the region on the west bank of the Jordan River that was occupied and administered by Jordan after 1948 before coming under Israeli control after the Six-Day War in 1967. (HE II at 1) Control of the West Bank is divided, per a 1994 agreement, between Israel and the Palestinian Authority. (HE II at 1) In 2007, Hamas, a U.S.-designated terror organization, violently took over the Gaza Strip, part of the territory of the West Bank that the Palestinian Authority had governed.

The U.S. State Department advises against travel to the West Bank because of the risk of terrorism, civil unrest, and the potential for armed conflict. (Item III at 1) Multiple terrorist groups are present in the West Bank. (HE IV at 2) The Palestinian authority continues to provide "martyr payments" to the families of Palestinian individuals killed carrying out terrorist acts. (HE V at 3)

### **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.

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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

## Analysis

### Guideline B, Foreign Influence

Under this guideline, "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." (AG ¶ 6) The following disqualifying conditions are potentially applicable under AG ¶ 7:

(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 West Bank has a significant problem with terrorism. The potential for civil unrest is pervasive. Consequently, Applicant's contacts with relatives who live there trigger the application of AG ¶¶ 7(a) and 7(b).

Applicant has been living in the United States for more than 25 years. In that time, he has earned a Ph.D, started a family, and saved more than \$1 million. He is a pillar of his community, and a highly-respected scientist. Given the financial, familial, community, and professional roots that he has cultivated during the 27 years he has

lived in the United States, I conclude that he would resolve any conflict, generated by his relatives residing in the West Bank, in the U.S. interest. AG ¶ 8(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,” applies. Applicant has mitigated the foreign influence security concern.

### **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.

In reaching this decision, I was particularly cognizant of Applicant’s stellar employment and character references.

### **Formal Finding**

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 – 1.d:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc Curry  
Administrative Judge