



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



In the matter of:)
)
-----) ISCR Case No. 17-03880
)
)
Applicant for Security Clearance)

Appearances

For Government:
Aubrey De Angelis, Esq., Department Counsel

For Applicant:
Pro se

December 27, 2018

Decision

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by the presence of his wife’s family members in Syria. His request for national security eligibility and a security clearance is granted.

Statement of the Case

On November 22, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s national security eligibility for a security clearance.

Applicant answered the SOR on December 15, 2017, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on February 23, 2018. The case was assigned to me on February 27, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 6, 2018, scheduling the hearing for April 4, 2018. The hearing was convened as scheduled. The Government offered Government Exhibits 1 and 2, which were admitted without objection. The Government also submitted Government Exhibit 3 for Administrative Notice. Applicant testified on his own behalf, called his wife as an additional witness, and submitted Applicant Exhibits A through E, which were also admitted without objection. Applicant requested the record remain open for the receipt of additional documentation. (Hearing Exhibit I.) Applicant Exhibits F through I were received in a timely fashion and admitted without objection. Applicant also submitted a post-hearing motion for a new hearing that was denied. (Hearing Exhibit II.) DOHA received the transcript of the hearing (Tr.) on April 16, 2018. The record closed on August 1, 2018.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Syrian Arab Republic (Syria). Department Counsel provided a six page summary of the facts, supported by five Government documents pertaining to Syria, identified as Government Exhibit 3. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. 14-15.)

Findings of Fact

Applicant admitted both of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old and married. He is applying for a security clearance in connection with his employment with a Defense contractor as a Quality Assurance Inspector. (Applicant Exhibit F.)

Paragraph 1 – Guideline B (Foreign Influence)

Applicant was born in Syria in 1985. He immigrated to the United States, along with his parents, in 2006. Applicant became a naturalized American citizen in 2011. His parents are also naturalized American citizens. Applicant has three siblings, none of whom live in Syria. (Tr. 24-28; Government Exhibit 1 at Sections 9, 18.)

Applicant's wife is also from Syria. She moved to the United States in 2010 and they were married in 2011. She became a naturalized American citizen in 2015. She is employed by a governmental entity in the United States as an inspector. In addition, she

teaches at an American university while continuing her education. Her family suffered religious persecution in Syria. (Tr. 28-29, 41-42, 49-50.)

Applicant's in-laws are Syrian citizens. (Mr. and Mrs. A.) Mr. A works in construction and had been living in Saudi Arabia for several years. Mrs. A is a retired teacher and lived primarily in Syria, though she spends a substantial part of each year in Saudi Arabia with Mr. A. Neither one of them has any connection to the Syrian government. Applicant has seen these people twice in person, the last time in 2011 when he got married in Syria. He has telephonic contact with them very seldom. Applicant's wife talks to her parents on approximately a weekly basis. (Tr. 30-32, 35-36, 44-45.)

Mrs. A's sister, Applicant's wife's aunt, is an American citizen. She petitioned for Mr. and Mrs. A to be allowed to immigrate to the United States in approximately 2004. They received permission to submit a petition for an immigrant visa in 2016. The petition was approved by United States Citizenship and Immigration Services, part of the Department of Homeland Security, in early 2017. In May 2017 they began the process with the Department of State's National Visa Center (NVC) to obtain immigrant visas. (Tr. 43-44; Answer.)

Through an authorized third party Mr. and Mrs. A gathered the required documents, and also paid the required fees. This took several months, primarily because of the requirement to get a police check from the countries where Mr. and Mrs. A live. In this case that was both Syria and Saudi Arabia. (Tr. 33-34, 46-48; Applicant Exhibits A and B.)

NVC notified Mr. and Mrs. A that all the required paperwork was received on April 11, 2018. At that point they entered the queue for an appointment with a consular official at the United States Embassy in Amman, Jordan. (Applicant Exhibit F.)

Mr. and Mrs. A were notified on June 2, 2018, that their interview was scheduled for July 29, 2018. Mr. and Mrs. A were required to travel to Beirut, Lebanon and fly on a specific airline flight to Amman at least five days before their interviews. Applicant supplied a copy of the airline reservation for Mr. and Mrs. A that fulfilled this requirement. No other information was available as the record closed. (Applicant Exhibits H and I.)

Applicant is proud to be an American citizen stating, "I have to build myself from scratch. So United States allowed me to do so." Applicant has been taking college classes in his area of work, achieving the Dean's List at his college in 2011. He is well-respected at his job, receiving a promotion and other recognition. (Tr. 20-22, 24, 58; Applicant Exhibits C, D, E, F.)

Applicant is very aware of his responsibilities if he obtains a security clearance, particularly if advances are made toward him or his relatives. He is also aware of his employer's requirements concerning foreign travel. (Tr. 55-57.)

Syria

I take administrative notice of the following facts concerning Syria: Since 1979, the United States has designated Syria a State Sponsor of Terrorism. There is an increased risk of kidnapping of U.S. citizens and westerners throughout Syria. The U.S. Department of State has a level 4 travel advisory in effect for Syria, which advises against all travel to Syria. (Government Exhibit 3: Attachments.)

Policies

When evaluating an applicant's suitability for a national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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(a), 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 national security eligibility 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks national security eligibility 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 EO 10865 provides that adverse 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

Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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.

Applicant’s mother-in-law and father-in-law are citizens and residents of Syria. The evidence is sufficient to raise these disqualifying conditions. Syria has significant internal anti-western terrorism threats that operate contrary to U.S. interests. Accordingly, Applicant’s substantial and close family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).¹

¹ 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

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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.

Applicant has minimal contact with his wife's parents in Syria. He last saw them in 2011, when he got married. Mr. and Mrs. A are in the process of immigrating to the United States. Applicant provided considerable documentary evidence showing that his in-laws have followed all the requirements to obtain an immigrant visa. Their interviews, the final step in the immigration process, were scheduled to be held shortly before the date the record closed in this case.

I have examined the fact that, as of the date the record closed, Applicant's wife still had connections to Syria, since her parents were still there. Several facts support the application of AG ¶¶ 8(a), (b), (c), and (e). First, Applicant has little personal contact with his in-laws, speaking to them only occasionally and last seeing them in 2011. Second, both Applicant and his wife have substantial connections to the United States,

has contacts with that relative, 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. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

primarily through their employment and the facts that his parents are already American citizens living here, and her parents are working diligently to move to the United States legally. Third, Applicant testified at length about his considerable knowledge of his employer's security policies concerning foreign contacts and travel, and his own ability to follow them.

Applicant is knowledgeable about his security responsibilities, and evinced a credible intent to follow appropriate rules in reporting any attempts by foreign actors to influence him. He is a proud American citizen, and he feels he has succeeded in this country on his own, without help from anyone. Applicant has completely mitigated the security significance of the presence of his wife's parents in Syria. Paragraph 1 is found for Applicant.

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 relevant 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(b), the ultimate determination of whether to grant national security 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 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(d) were addressed under that guideline, but warrant additional comment.

Applicant was born and raised in Syria. He moved to the United States in 2006, and is married to another naturalized American citizen. Applicant has shown himself to be a talented and patriotic American citizen and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for national security eligibility and a security

clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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|---------------------------|---------------|
| Paragraph 1, Guideline B: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |

Conclusion

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

Wilford H. Ross
Administrative Judge