



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 18-01833 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 17, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on September 12, 2018, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on September 28, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 9, 2018. As of November 30, 2018, he had not responded. The case was assigned to me on February 8, 2019.

The Government exhibits included in the FORM are admitted in evidence. Department Counsel requested that I take administrative notice of certain facts about Syria. Applicant did not object, and the request is granted. The facts are summarized in the written request and will not be repeated verbatim. Of particular note is that Syria is ruled by an authoritarian regime that is currently engaged in a full-scale civil war with the armed Syrian opposition, resulting in more than 400,000 deaths, 5.1 million refugees, and 6.3 million displaced persons inside Syria. The risk of terrorist activities in Syria remains extremely high. No section of Syria is safe or immune from violence, and the potential exists throughout the country for hostile acts, targeted or random, against U.S. and other Western nationals at any time. The country's human rights record remains poor. Syria is a state sponsor of terrorism.

Findings of Fact

Applicant is a 37-year-old engineer for a defense contractor. He has worked for his current employer since 2013. He has held a top secret security clearance since 2014, but his eligibility for access to sensitive compartmented information (SCI) was denied in 2017. He has a bachelor's degree, awarded in 2012, and a master's degree, awarded in 2015. He is married with one child.¹

Applicant was born in Syria to Syrian parents. His brother immigrated to the United States to attend a religious college and become a missionary. Applicant followed his brother to the United States in 2003 and attended the same religious college as his brother for three years. Applicant obtained his bachelor's and master's degrees in the United States from a different U.S. college. He met his wife, a native-born U.S. citizen, at the religious college. They married in 2007. Their child was born in the United States. Applicant became a U.S. citizen in 2012. His brother is also a U.S. citizen and apparently still a Syrian citizen.²

Applicant's parents and three additional siblings are Syrian citizens. His parents and one of his siblings are residents of Syria. One sibling is a resident of Egypt, married to an Egyptian citizen, and the last sibling is a resident of Austria, married to an Austrian citizen. Applicant's father is a minister. None of Applicant's family has any direct connection to the Syrian or Egyptian governments.³

Applicant has not returned to Syria since he left in 2003. He stated that he initially did not return because he did not have the money for the trip, then his Syrian passport expired in about 2007 or 2008, and then the civil war broke out and he had no desire to return. He does not plan to ever return to Syria. His brother in the United States did some missionary work in Syria, but he stopped going after the war began. Applicant and

¹ Item 3-5

² Items 2-5.

³ Items 2-5.

his brother met their parents, siblings, and siblings' spouses in Lebanon in 2015 for a family reunion.⁴

Applicant does not have any foreign assets in Syria. He earns more than \$100,000 per year. He gave his parents \$200 during his 2015 trip. That is his only financial support to his family in Syria.⁵

Applicant did not appeal the denial of his eligibility for access to SCI. He explained that he was not working on a program that required SCI access, and his facility security officer and supervisor both told him that they had plenty of work for him that only required a top secret clearance.⁶

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the national security."

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,

⁴ Items 3-5.

⁵ Items 4, 5.

⁶ Items 4, 5.

or mitigate facts admitted by the 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Guideline B, Foreign Influence

The security concern 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. The following 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 parents and three siblings are Syrian citizens. His fourth sibling is a dual U.S. and Syrian citizen living in the United States. His parents and one sibling are residents of Syria. His remaining two siblings are residents of Egypt and Austria. Syria is ruled by an authoritarian regime that is currently engaged in a full-scale civil war with the armed Syrian opposition. The risk of terrorist activities in Syria remains extremely high. The country's human rights record remains poor. Syria is a state sponsor of terrorism. Applicant's foreign family members create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(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.

I considered the totality of Applicant's ties to Syria. The nature of a nation's government, its relationship with the United States, 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 authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant followed his brother to the United States in 2003 to attend the same religious college as his brother. He met his wife, a native-born U.S. citizen, at the religious college. Their child was born in the United States. He has worked for his current employer since 2013, and he earns more than \$100,000 per year. He has held a top secret security clearance since 2014. He does not own any assets in Syria. He has not been back to Syria since 2003, and he has no intention of returning.

It is unclear what has changed since Applicant received a top secret security clearance in 2014, with the exception that the violent and volatile situation in Syria has deteriorated even more. Nonetheless, Applicant has had four more years of establishing his ties to the United States. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Syrian government, a terrorist organization, or his Syrian family members. I further find there is no conflict of interest, because Applicant has such deep and long-standing relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

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(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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1, Guideline B: | For Applicant |
| Subparagraphs 1.a-1.c: | For Applicant |

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge