



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



In the matter of: )  
)  
) ADP Case No. 19-00323  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

09/11/2019

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant has important connections to family living in Yemen. Yemen is in the midst of a conflict and is a dangerous environment. Foreign influence trustworthiness concerns are not mitigated. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On July 14, 2016, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On February 21, 2019, 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. (Hearing Exhibit (HE) 2)

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 access to sensitive information for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or

revoked. Specifically, the SOR set forth trustworthiness concerns arising under Guideline B (foreign influence).

On March 22, 2019, Applicant responded to the SOR and requested a hearing. (HE 3) On June 13, 2019, Department Counsel was ready to proceed. On June 20, 2019, the case was assigned to me. On July 24, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for August 7, 2019. (HE 1) Applicant's hearing was held as scheduled using video teleconference. Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Transcript (Tr.) 11)

During the hearing, Department Counsel offered two exhibits; Applicant provided some clarifying information concerning the facts in GE 2; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 17-21; GE 1-2) Applicant did not offer any exhibits at his hearing. (Tr. 12) On August 17, 2019, DOHA received a transcript of the hearing. The record was held open until September 9, 2019, to provide Applicant an opportunity to submit additional evidence. (Tr. 10-11) Applicant provided seven documents which were admitted without objection. (Applicant Exhibit (AE) A-AE G)

### **Procedural Rulings**

Department Counsel offered summaries for administrative notice concerning foreign influence trustworthiness concerns raised by Applicant's connections to Yemen. (Tr. 21; HE 4) Applicant did not object to me taking administrative notice of those facts, and I granted Department Counsel's motion. (Tr. 21) 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 ADP 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). Portions of Department Counsel's administrative notice request are quoted with minor changes and without quotation marks and footnotes.

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 his family's privacy. The cited sources contain more specific information.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. (Tr. 13-14; HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 37-year-old manager and lead integration architect employed by a government contractor. (Tr. 14-15, 22, 28; GE 1) He needs authorization for access to sensitive medical information to enable him to expand his audit responsibilities. (Tr. 28-29)

In 1999, Applicant graduated from a high school in Yemen. (Tr. 6) From 2004 to 2006, he worked for the U.S. Government in Yemen as an accounting assistant. (Tr. 7-8, 24; AE D) He studied English before coming to the United States. (Tr. 22-23) In 2004, he emigrated from Yemen to the United States. (Tr. 7, 22) In 2006, he received a bachelor's degree in computer information systems from a U.S. university. (Tr. 6) In 2011, he received a master's degree in business administration from a U.S. university. (Tr. 6, 15) He had a 3.52 grade point average (GPA) during his master's degree program. (AE A)

In 2011, Applicant married a native-born U.S. citizen. (Tr. 8) His eight-year-old daughter was born in the United States. (Tr. 8) His spouse does not work outside their home. (Tr. 34) He has not served in the military of any country. (Tr. 7) In 2015, Applicant became a U.S. citizen. (Tr. 60)

The only time Applicant returned to Yemen was in 2012 for two or three weeks after his mother died. (Tr. 20, 36) He went to Yemen to assist his family. (Tr. 20) Applicant does not own any property or have any financial accounts in Yemen. (Tr. 30, 32) Applicant has a right to inherit some property from his father in Yemen when his father dies. (Tr. 31) Applicant owns a house (with a mortgage) in the United States, and he has a 401(k) and bank accounts in the United States. (Tr. 34-35)

The SOR raises the following foreign influence trustworthiness concerns:

SOR ¶ 1.a alleges and Applicant admits that his father is a citizen and resident of Yemen, and the Yemen government employs or has recently employed him. (Tr. 44; HE 3) Applicant is unsure whether his father is currently working for the Yemen government because of turmoil in the government. (Tr. 44) Applicant has sent about \$1,000 annually for the last two years to support his father in Yemen. (Tr. 37-39) In the last five years, his father visited Applicant in the United States. (Tr. 42) His father held a significant elected position in the Yemen government for several years. (Tr. 41, 45-46, 53) He is out of power now because the Houthis control the capital. (Tr. 46) His father remains prominent in Yemen. (Tr. 53-54)

SOR ¶¶ 1.b and 1.d allege and Applicant admits that four of his brothers and three of his sisters are citizens and residents of Yemen, and the Yemen government employs one of his brothers. (Tr. 47-48; HE 3) Applicant sends each of his brothers and sisters in Yemen about \$25 annually as a gift to show he cares for them. (Tr. 40) He has contacts with his siblings on a weekly to quarterly basis by telephone. (GE 2)

SOR ¶ 1.c alleges and Applicant admits one of his brothers is a citizen of Yemen and a resident of the United States. His older brother earned his bachelors, masters, and Ph.D. degrees in the United States and is currently a professor at a U.S. university. (Tr.

26-27) In 2016, his older brother became a U.S. citizen through marriage. (Tr. 27-28; AE G) None of his sisters or their spouses are connected to the Yemen government. (Tr. 50)

SOR ¶ 1.e alleges and Applicant admits one of his sisters is a citizen of Yemen and a resident of Germany. (Tr. 51; HE 3) He is unsure about whether she has become a naturalized citizen of Germany. (Tr. 51-52)

Applicant has contact with his father and siblings in Yemen through WhatsApp, a computer application that enables one to communicate with a group of people, including sending pictures and videos at the same time. (Tr. 47-48) Someone in his family group, which includes his family in Yemen, will normally send a message on WhatsApp about once a week. (Tr. 49, 52) The messages are not detailed, and they are mostly greetings. (Tr. 48-50) He does not disclose work-related information to his family in Yemen. (Tr. 67)

### **Character Evidence**

In 2007, Applicant was notified that he was on his university's Athletic Director's Honor Roll. (AE B) The Director of Applicant's language education program described Applicant as conscientious, diligent, helpful, motivated, and intelligent. (AE C; AE F) Applicant's manager described Applicant as trustworthy, honest, committed to his employer, and professional. (AE E)

Applicant said he is loyal to and supports the United States. (Tr. 61, 63) He loves the United States and will abide by U.S. laws and rules. (Tr. 63) He is and will continue to be a good U.S. citizen. (Tr. 61, 63)

### **Yemen**

The Kingdom of Yemen (colloquially known as North Yemen) became independent from the Ottoman Empire in 1918, and in 1962, became the Yemen Arab Republic. The British withdrew in 1967 from what became the People's Republic of Southern Yemen (colloquially known as South Yemen). The massive exodus of hundreds of thousands of Yemenis from the south to the north contributed to two decades of hostility between the states. The two countries were formally unified as the Republic of Yemen in 1990.

Public rallies in Sana'a (Yemen's capital) starting in late January 2011 against then President Ali Abdallah Salih, inspired by similar demonstrations in Tunisia and Egypt, slowly built momentum. In November 2011, Salih signed the Gulf Cooperation Counsel (GCC) Initiative to step down and to transfer some of his powers to Vice President Abd Rabuh Mansur Hadi.

Huthi rebels joined forces with Salih, culminating in a major offensive against military units and rival tribes and enabling their forces to overrun the capital. In January 2015, the Huthis surrounded the presidential palace. Hadi escaped to Oman, and then moved to Saudi Arabia and asked the GCC to intervene. In March, Saudi Arabia assembled a coalition of Arab militaries and began airstrikes against the Huthis. Ground

fighting between Huthi-aligned forces and resistance groups backed by the Saudi-led coalition continued.

Amid rising tensions between the Huthis and Salih, sporadic clashes erupted in mid-2017, and escalated into open fighting that ended when Huthi forces killed Salih in early December 2017. In December 2018, the Huthis and Yemen Government participated in the first UN-brokered peace talks since 2016. In April 2019, Yemen's parliament convened for the first time since the conflict broke out.

The United States Department of State has issued a Level 4: Do Not Travel Warning due to terrorism, civil unrest, health risks, kidnapping, and armed conflict. The State Department reports that terrorist groups continue to plot and conduct attacks in Yemen. Terrorists may attack with little or no warning, targeting public sites, transportation hubs, markets/shopping malls, and local government facilities.

Additionally, there is a continuing threat of kidnapping/detention by terrorists, criminal elements, and/or non-government actors. Employees of western organizations may be targeted for attack or kidnapping. No part of Yemen is immune to violence. Critical levels of violence, to include armed conflict, artillery shelling, and air strikes, persist throughout the country. The U.S. Embassy in Sana'a suspended its operations in February 2015. The U.S. government is unable to provide emergency services to U.S. citizens in Yemen.

In December 2015, President Obama signed into law the Visa Waiver Program Improvement and Terrorist Travel Protection Act of 2015, which amended the existing Visa Waiver Program. Under the 2015 amendment, citizens of Yemen are ineligible to travel or be admitted to the United States under the Visa Waiver Program. The exclusion of Yemen from waiver eligibility reflects the determination of the Secretary of Homeland Security that the presence of an individual in that country increases the likelihood that the individual is a credible threat to the national security of the United States; that a foreign terrorist organization has a significant presence in the country; or that the county is a safe haven for terrorists.

Throughout 2017, al-Qa'ida in the Arabian Peninsula (AQAP) and ISIS-Yemen continued to exploit the political and security vacuum created by the ongoing conflict between the Yemen government and Houthi-forces. AQAP's area of influence has increased since the onset of the civil war. A large security vacuum persists, which gives AQAP and ISIS-Yemen more room to operate. Counterterrorism gains in 2017 removed several key leaders and decreased AQAP's freedom of movement, but AQAP and ISIS-Yemen continue to carry out terrorist attacks throughout government-held territory. ISIS-Yemen remained considerably smaller in size and influence compared to AQAP, but remained operationally active. ISIS-Yemen attacks increased in late 2017, exploiting the tenuous security environment in Aden. AQAP and ISIS-Yemen terrorists carried out hundreds of attacks throughout Yemen in 2017. Methods included suicide bombers, vehicle-borne improvised explosive devices (VBIEDs), ambushes, kidnappings, and targeted assassinations.

Yemen does not have comprehensive counterterrorism legislation and no progress was made due to the state of unrest and the fact that most of Yemen's government remains in exile outside of Yemen. Due to a lack of resources and organization, police forces throughout the country struggle to exert authority.

In 2018, human rights issues in Yemen included unlawful or arbitrary killings, including political assassinations; forced disappearances; torture; arbitrary arrest and detention; harsh and life-threatening prison conditions; political prisoners; arbitrary infringements on privacy rights; criminalization of libel, censorship, and site blocking; substantial interference with freedom of assembly and association; the inability of citizens to choose their government through free and fair elections; pervasive corruption; recruitment and use of child soldiers; and criminalization of consensual same sex-sexual conduct. Saudi-led Coalition airstrikes resulted in civilian casualties and damage to infrastructure on multiple occasions. Non-state actors, including Houthis, tribal militias, militant secessionist elements, AQAP, and a local branch of ISIS, reportedly committed significant abuses with impunity.

## **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 [or a public trust position]." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government's authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. *See Id.* at 527.

The standard that must be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. 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.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. 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 (4<sup>th</sup> 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 and trustworthiness 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. 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 [or access to sensitive information].” 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 [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” Section 7 of Executive Order (EO) 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.”

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the trustworthiness 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 has two conditions that could raise a trustworthiness 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.

Applicant's father and seven siblings are citizens and residents of Yemen. Applicant has frequent contacts with them. The Appeal Board has concluded that contact every two months or more 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). Applicant is bound to his family in Yemen by mutual affection.

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 safety issues for residents of Yemen primarily because of terrorists and other lawless entities operating in Yemen as well as the ongoing conflict. The mere possession of close family ties with relatives living in Yemen 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 or sensitive information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members, and this presumption includes in-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's spouse's relatives are not citizens and residents of a foreign country.

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 important consideration is the nature of a nation's government's relationship with the United States. These factors 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 Yemen with the United States, and the situation in Yemen places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Yemen or visiting Yemen does not pose a trustworthiness or security risk. Applicant's father is a prominent citizen of Yemen who held an important position in the Yemen government before Houthi forces seized the capital of Yemen. His high profile in Yemen significantly increases the foreign-influence security concern in this case.

Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Yemen. 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 even when they are not prominent:

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 [or sensitive] 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.

Guideline B security or trustworthiness concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified [or sensitive] 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 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 Yemen seek or have sought sensitive information from or through Applicant or his 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 Yemen, like many countries, has a problem with terrorism. Applicant’s family in Yemen “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.” 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 Yemen or visiting Yemen create a potential conflict of interest because terrorists could place pressure on his family in Yemen in an effort to cause Applicant to compromise sensitive 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 Yemen 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 trustworthiness 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 [or eligibility for a public trust position], there is a strong presumption against the grant or maintenance of a security clearance [or access to sensitive information]. 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 [or trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [such] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified [or sensitive] 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).

Applicant immigrated to the United States in 2004, and he became a U.S. citizen in 2015. His daughter, spouse, and older brother are citizens and residents of the United States. He earned his bachelors and master's degrees in the United States. He is employed in the United States. He took an oath of allegiance to the United States when he became a U.S. citizen.

Applicant has important connections to Yemen. He was born in Yemen, and he lived in Yemen until 2004. His father and seven siblings are citizens and residents of Yemen. He has frequent contacts with his relatives in Yemen. He traveled to Yemen in 2012. Applicant is bound to his family in Yemen by mutual affection. Applicant's father is

prominent in Yemen and held an important position in the Yemen government before the Houthi's took control of the government. His brother is currently a Yemen government official.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family in Yemen. His family in Yemen continues to be at risk primarily from terrorists and the ongoing conflict in Yemen. Applicant's potential access to sensitive information could theoretically add risk to his relatives living in or visiting Yemen. Yemen is an exceptionally dangerous country, and Applicant's father is prominent in Yemen. Foreign influence trustworthiness concerns are not mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance or access to sensitive information 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 access to a public trust position and access to sensitive information "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 37-year-old manager and lead integration architect employed by a defense contractor. From 2004 to 2006, he worked for the U.S. Government in Yemen as an accounting assistant. He studied English before coming to the United States. In 2004, he emigrated from Yemen to the United States. He received a bachelors and master's degrees from a U.S. university. Applicant married a native-born U.S. citizen. His eight-year-old daughter was born in the United States. In 2015, Applicant became a U.S. citizen, and he swore an oath of allegiance to the United States. All of his property and financial interests are in the United States. SOR ¶¶ 1.c and 1.e referenced relatives not living in Yemen, and those allegations are mitigated.

Applicant's character evidence described him as conscientious, diligent, helpful, motivated, and intelligent. His manager emphasized his trustworthiness, honesty, commitment to his employer, and professionalism.

A Guideline B decision concerning Yemen must take into consideration the geopolitical situation and dangers there. 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). Yemen is a dangerous place because of violence from terrorists and the ongoing civil war. The Houthi-controlled Yemen government does not fully comply with the rule of law or protect civil liberties in many instances.

Applicant has frequent contacts with his family in Yemen. His father is a prominent citizen and resident of Yemen. He has seven siblings that are citizens and residents of Yemen. His relationships with family in Yemen raise important unresolved foreign influence trustworthiness concerns.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Applicant failed to fully mitigate the trustworthiness concerns under Guideline B (foreign influence).

### **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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, and 1.d:	Against Applicant
Subparagraphs 1.c and 1.e.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

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Mark Harvey  
Administrative Judge