



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



In the matter of:

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ISCR Case No. 19-01556

Applicant for Security Clearance

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: Personal Representative

12/05/2019

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant has strong connections to Syria, a country in the midst of a civil war. He has relatives, including his spouse and parents, who are citizens and residents of Syria. His relationships with them create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 16, 2017, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On June 10, 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 a security clearance 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 security concerns arising under Guideline B (foreign influence). (HE 2) On July 1, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On September 10, 2019, Department Counsel was ready to proceed. On October 15, 2019, the case was assigned to me. On October 16, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice, setting Applicant's hearing for November 14, 2019. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits (GE 1-4); Applicant offered one exhibit (Applicant Exhibit (AE) A); there were no objections to GEs 1-3 and AE A; and all proffered exhibits, except GE 4, were admitted into evidence. (Transcript (Tr.) 14-16) On November 26, 2019, DOHA received a transcript of the hearing.

### **Procedural Rulings**

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Syria and Saudi Arabia. (Tr. 16-17; GE 3, 4) Applicant objected to administrative notice concerning Saudi Arabia because of his and his relative's lack of connections to Saudi Arabia, and I deferred ruling on the request for administrative notice. (Tr. 17; GE 4) Applicant did not object to me taking administrative notice of those facts concerning Syria, and I granted Department Counsel's motion. (Tr. 17; GE 3) 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). Portions of the Department Counsel's request for administrative notice are quoted without quotation marks and footnotes.

Department Counsel proffered an administrative notice request concerning Saudi Arabia; however, the evidence of record is that Applicant's relatives who were living in Saudi Arabia left Saudi Arabia after the SOR was issued. (GE 4) Government Exhibit four is not admitted because of its lack of relevance; however, it is attached to the record for potential appellate consideration.

Department Counsel moved to withdraw the allegations in SOR ¶¶ 1.c (alleges Applicant's sister is a dual citizen of the United States and Syria, and she resides in Saudi Arabia) and 1.g (alleges Applicant's sister-in-law is a citizen of Syria and a resident of Saudi Arabia). (Tr. 48) Applicant did not object, and Department Counsel's motion was granted. (Tr. 48-49)

Some details in this case were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

## Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.f. (HE 3) He denied SOR ¶ 1.g. He also provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 34-year-old information technology security officer. (Tr. 18, 28) Applicant's parents were living in the United States when Applicant was born in the United States. (Tr. 29) When Applicant was six years old, he moved from the United States to Syria with his parents. (Tr. 29) In 2001, he returned to the United States when he was 16 or 17 years old without his parents, and he lived with his brother. (Tr. 30) Around 2002 or 2003, he graduated from high school in the United States. (Tr. 30) After high school Applicant attended a university for one or two semesters in the United States, and then he attended a university in Cyprus from 2004 to 2008. (Tr. 31) During breaks, Applicant traveled from Cyprus to Syria, and he did not go to the United States. (Tr. 31)

From 2008 to 2012, Applicant lived in Syria and worked in his father's store. (Tr. 32) In late 2012, Applicant returned to the United States. (Tr. 33) In about 2013 or 2014 for about 13 months, Applicant was deployed to Afghanistan. (Tr. 33) Applicant does not own any real estate in the United States or Syria. (Tr. 34) Applicant does not currently have a security clearance; however, if he receives a security clearance it will enhance his value to his company and his ability to provide greater contributions to mission accomplishment. (Tr. 45-46) Applicant does not intend to be employed as a linguist or translator.

## Foreign Influence

Applicant's mother and father are dual citizens of the United States and Syria. (SOR response to ¶¶ 1.a and 1.b) In 1991, Applicant's parents moved from the United States to Syria, and they have lived in Syria ever since, except for about a year they lived in the United States several years ago. (Tr. 34, 40) His parents rely on his father's inheritance and funds saved from his father's employment when he owned a business in Syria for their livelihoods. (Tr. 35) Applicant traveled to Syria twice in 2018 and twice in 2019 to visit his relatives. (Tr. 40) He communicates with his parents on a weekly basis. (Tr. 40)

Applicant paid the Syrian government \$6,000 to avoid Syrian military service. (Tr. 40) He was eligible for this benefit because he had dual citizenship with the United States and had lived outside of Syria for more than five years. (Tr. 41) One or both of his brothers also avoided Syrian military service by paying \$6,000. (Tr. 42)

Applicant has two brothers and one sister. (Tr. 35) One brother lives in the United States, and another brother lived in Saudi Arabia and moved to the United States. (Tr. 15, 36) His sister recently moved from Saudi Arabia to the United Arab Emirates (UAE). (Tr. 36) Her husband works for an American company. (Tr. 36) None of Applicant's three siblings have worked for the Syrian government or military. (Tr. 36-37)

Applicant's spouse and parents-in-law are citizens and residents of Syria. (SOR response to ¶¶ 1.d, 1.e, and 1.f) In January 2018, Applicant married his spouse in Syria. (Tr. 37) His spouse is 25 years old. (Tr. 42) His spouse lives with her parents. His spouse and parents-in-law are not employed by the Syrian government or military. (Tr. 38-39) Applicant has been waiting two years for approval of his spouse's visa to enable her to travel to the United States. (Tr. 27-28) The Administrative Notice concerning Syria indicates Syrian nationals are having difficulty getting visas to the United States. Applicant does not have any children. (Tr. 39, 42) His spouse has never been to the United States. (Tr. 42) She is not a U.S. citizen. Applicant does not provide financial support to anyone living in Syria. (Tr. 42)

Applicant's spouse has three siblings. (Tr. 39) One sister lives in Dubai; another sister lives in Germany; and her brother lives in Canada. (Tr. 39)

Applicant objected to the government of Syria because of the way that government treated people. (Tr. 27) He said, "I feel like that they're a dictatorship, and they're a bunch of thugs." (Tr. 27)

Applicant worked for a government contractor in Afghanistan for 13 months as a program manager. (Tr. 21, 24-25) On one occasion, someone attacked one of his employer's offices and blew it up. (Tr. 25) He risked injury or death on a daily basis when traveling in Afghanistan due to shootings and roadside bombs. (Tr. 25-26) He continued his employment in Afghanistan because he was loyal to his employer and the United States. (Tr. 26) Applicant was not injured in Afghanistan. (Tr. 22) He believed in the mission of helping the Afghan government become a democratic country. (Tr. 26) Applicant loves the United States, and he supports the United States over all other countries. (Tr. 44)

### **Character Evidence**

Applicant's supervisor has worked in the security field for 32 years. (Tr. 18) He has known Applicant for two years. (Tr. 18) Applicant is loyal, patriotic, diligent, responsible, and dedicated to mission accomplishment. (Tr. 18-23) Applicant has stated his first loyalty is to the United States. (Tr. 19) Applicant expressed his desire that his spouse emigrate from Syria to the United States. (Tr. 19) Applicant is conscientious about maintenance of security. (Tr. 19) He recommended that Applicant receive a security clearance. (Tr. 21)

Applicant's personal representative provided some evidence about Applicant's good character during the hearing. He reiterated the positive statements of Applicant's supervisor. (Tr. 46-47) He emphasized that Applicant is a global citizen who risked his life to protect U.S. interests in Afghanistan.

### **Syria**

The Syrian Arab Republic is ruled by an authoritarian regime dominated by the Socialist Ba'ath Party which is currently engaged in a full-scale civil war with the armed Syrian opposition. Sources estimate that the conflict has resulted in over 400,000 deaths

with many thousands more wounded. The Syrian conflict has resulted in over 5.1 million registered Syrian refugees, and approximately 6.3 million people are displaced inside Syria, while 4.53 million remain in hard-to-reach and besieged areas. Attacks from the regime or other groups could happen with little or no warning, no part of Syria should be considered immune from violence, and the potential exists throughout the country for unpredictable and hostile acts, including kidnappings, sniper assaults, terrorist attacks, small arms fire, improvised explosives, artillery shelling, airstrikes, the use of chemical weapons, large- and small-scale bombings, as well as arbitrary arrest, detention, and torture.

The Department of State has issued a Level 4: Do Not Travel Advisory regarding Syria, stating: "Do not travel to Syria due to terrorism, civil unrest, kidnapping, and armed conflict." The U.S. Embassy in Damascus suspended its operations in February 2012. The Czech Republic serves as the protecting power for U.S. citizens in Syria. The range of consular services that the Czech Republic provides to U.S. citizens is extremely limited, and the U.S. government is unable to provide emergency services to U.S. citizens in Syria. There is an ongoing and increased risk of kidnapping of U.S. citizens and Westerners throughout the country. U.S. citizens remain a target, and many abductions having occurred since mid-2012.

Despite successes, the terrorist landscape grew more complex in 2017. ISIS, al-Qaida (AQ), and their affiliates have proven to be resilient, determined, and adaptable, and they have adjusted to heightened counterterrorism pressure in Syria and elsewhere. The return or relocation of foreign terrorist fighters from the battlefield has contributed to a growing cadre of experienced, sophisticated, and connected terrorist networks, which can plan and execute terrorist attacks. ISIS, AQ, and its affiliates continued to maintain safe havens amidst the fragile political and security climate across the region, particularly in Yemen and Syria.

President Bashar Assad has ruled the Syrian Arab Republic since 2000. The constitution mandates the primacy of Ba'ath Party leaders in state institutions and society, and Assad and Ba'ath party leaders dominate all three branches of government as an authoritarian regime. An uprising against the government that began in 2011 continued throughout the year. The 2014 presidential election and the April 2016 parliamentary elections resulted in the election of Assad and 200 People's Council (Syrian parliament) seats for the Ba'ath Party-led National Progressive Front, respectively. Both elections took place in an environment of widespread government coercion, and many Syrians residing in opposition-held territory did not participate in the elections. Observers did not consider the elections free or fair.

Designated in 1979 as a State Sponsor of Terrorism, Syria continued its political and military support to a variety of terrorist groups. The regime continued to provide weapons and political support to Lebanese Hezbollah (LH) and continued to allow Iran to rearm the terrorist organization. The Assad regime's relationship with LH and Iran grew stronger in 2017 as the regime became more reliant on external actors to fight regime opponents. President Bashar al-Assad remained a staunch defender of Iran's policies, while Iran exhibited equally energetic support for the Syrian regime.

Over the past decade, the Assad regime's permissive attitude towards AQ and other terrorist groups' foreign terrorist fighter facilitation efforts during the Syria conflict in turn fed the growth of AQ, ISIS, and affiliated terrorist networks inside Syria. The Syrian government's awareness and encouragement for many years of terrorists' transit through Syria to enter Syria for the purpose of fighting Coalition Forces is well documented. Those networks were among the terrorist elements that brutalized the Syrian population in 2017. Additionally, Shia militia groups, some of which are U.S. designated Foreign Terrorist Organizations aligned with Iran, continued to travel to Syria to fight on behalf of the Assad regime.

During 2018, government-linked paramilitary groups reportedly engaged in frequent violations and abuses, including massacres, indiscriminate killings, kidnapping of civilians, arbitrary detentions, and rape as a war tactic. Government-affiliated militias, including LH, supported by Iran, repeatedly targeted civilians. The Syrian government took no steps to investigate, prosecute, or punish officials who committed human rights violations or abuses. Impunity was pervasive and deeply embedded in the security forces and elsewhere in the government.

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 Iran, Syria, Sudan, and Syria are ineligible to travel or be admitted to the United States under the Visa Waiver Program. The exclusion of these countries 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 country is a safe haven for terrorists.

On September 24, 2017, President Trump suspended the "entry into the United States of nationals of Syria as immigrants and nonimmigrants" due to "significant inadequacies in [Syria's] identity-management protocols, [its failure] to share public-safety and terrorism information," and the country's status as "the source of significant terrorist threats." Subject to limited exceptions for dual-nationals, current visa holders, other narrow categories, and the Department of Homeland Security's authority to waive the ban "in the national interest," Syrian nationals are categorically banned from entering the United States.

## **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.

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. Thus, nothing in this decision should be construed to suggest that it is based, 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 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.

Applicant’s mother and father are dual citizens of the United States and Syria. His parents currently live in Syria. Applicant’s spouse and parents-in-law are citizens and residents of Syria, and they are not citizens of the United States. Applicant’s spouse lives with her parents in Syria. Applicant has frequent contact with his parents and spouse.

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 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 Syria primarily because of terrorists and criminals and the ongoing civil war. The war in Syria has resulted in over 400,000 deaths and displacement of millions of Syrian residents. The Syrian



government is closely related to the Iranian government, and both of them are hostile to the United States interests. Syria is a state sponsor of terrorism.

The mere possession of close family ties with relatives living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, 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).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her 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 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, terrorism causes 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 Syria with the United States and the situation in Syria place a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in or visiting Syria do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting a relative living in or visiting Syria.

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 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. 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 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 or in Syria seek or have sought classified or economic 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 Syria has a significant problem with terrorism and crime. Applicant's family in those countries "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 Syria or visiting that country create a potential conflict of interest because terrorists could place pressure on his family in Syria 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 Syria 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).

Applicant's mother and father are dual citizens of the United States and Syria. His parents currently live in Syria. Applicant's spouse and parents-in-law are citizens and residents of Syria. Applicant's spouse lives with her parents. Applicant has frequent contact with his parents and spouse. Applicant went to Syria twice in 2018 and twice in 2019.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. He was born in the United States. He lived in the United States from 1985 to 1991, from 2001 to 2004, and from 2012 to present. He is credited with residency in the United States while he served in Afghanistan for 13 months. Applicant has two brothers and one sister. The two brothers live in the United States. His sister recently moved from Saudi Arabia to the UAE. Her husband works for an American company. None of Applicant's siblings have worked for the Syrian government or military.

Applicant's support to the DOD in Afghanistan, including the dangers that service entailed, weighs towards mitigation of security concerns. Applicant seeks a security clearance to enable him to continue providing assistance to DOD. He has shown his patriotism, loyalty, and fidelity to the United States during his support to DOD while serving in Afghanistan.

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 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) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") 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 his relationships with relatives who are citizens and residents of Syria. Applicant has close relationships with family in that country, and they are at risk from criminals, terrorists, and human rights violations of the Syrian government.

It is important to be mindful of the United States' huge historical investment of manpower and money in the Middle East. Applicant's support to DOD can contribute to the accomplishment of DOD's goals and missions in the Middle East. Weighing against approval of access to classified information are Applicant's family members living in Syria, and they are potential targets of terrorists and the Syrian government. Applicant's access to classified information could theoretically add risk to his relatives living in Syria.

In sum, Applicant's connections to his relatives living in Syria are too significant to mitigate the circumstances Applicant presented. His connections to the United States taken together, while important, are not 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 34-year-old information technology security officer. Applicant has important connections to the United States that weigh towards granting his security clearance. He was born in the United States. He lived in the United States a total of about 16 years. As indicated previously, Applicant's support to the DOD in Afghanistan, including the dangers that service entailed, weighs towards mitigation of security concerns. His parents are citizens of the United States. His brothers are citizens and residents of the United States. Applicant is patriotic, diligent, responsible, and dedicated to mission accomplishment. Applicant is conscientious about maintenance of security. His supervisor and personal representative support his access to classified information. He is a loyal U.S. citizen. He honestly and sincerely described his love and support for the United States.

A Guideline B decision concerning Syria must take into consideration the geopolitical situation and dangers in those countries. 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). Syria is a dangerous place because of violence from terrorists and criminals, the ongoing civil war, and the Syrian government does not respect the full spectrum of human rights. Syria is an ally of Iran and opposes the interests of the United States. Terrorists, criminals, and the Syrian government continue to threaten the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States.

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 not mitigated. Eligibility for access to classified information is denied.

## 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 and 1.b:	Against Applicant
Subparagraph 1.c:	Withdrawn
Subparagraphs 1.d, 1.e, and 1.f:	Against Applicant
Subparagraph 1.g:	Withdrawn

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge