



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



In the matter of:)	
)	
REDACTED)	ADP Case No. 19-02091
)	
Applicant for Public Trust Position)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant, on his own and through his spouse, has significant ties to Saudi Arabia. Applicant also has ties to Egypt through his father, who resides in the country and has a film studio. Applicant attended college in the United States on a \$200,000 scholarship from the Saudi Arabian government. He has yet to establish longstanding and deep ties to the United States. The foreign influence security concerns are not mitigated. Eligibility for a public trust position is denied.

Statement of the Case

On August 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B, foreign influence. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On September 6, 2019, Applicant responded to the SOR allegations, and requested a decision based on the written record in lieu of a hearing. On October 28, 2019, the Government submitted a File of Relevant Material (FORM), containing six exhibits (Items 1-6). On October 29, 2019, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on November 6, 2019. No response was received by the December 6, 2019 deadline. On January 8, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on January 13, 2020, and I issued a decision on Applicant's security clearance eligibility on January 29, 2020.

On January 29, 2020, after the decision was issued, I was notified by Department Counsel that Applicant had submitted a late response to the FORM on December 30, 2019, in which he indicated, in part, that he requires a position of trust and not a DOD security clearance. I was also informed that, on January 24, 2020, DOHA had confirmed with Applicant's security manager that Applicant is currently being sponsored for a public trust position to access sensitive finance and budget information for the DOD. After the close of business on January 29, 2020, Department Counsel submitted a memorandum for the record requesting a decision on Applicant's eligibility for a public trust position and asserting that the same standards and adjudicative guidelines apply in security clearance eligibility and trustworthiness cases. Included with that memorandum were Applicant's December 30, 2019 response to the FORM and email correspondence of January 24, 2020, between DOHA and Applicant's security manager. After reviewing that documentation, on January 30, 2020, I vacated my decision of January 29, 2020, and informed the parties that I would issue a decision on Applicant's trustworthiness after considering the Government's FORM, supplemented by Department Counsel's December 30, 2019 memorandum, and Applicant's December 30, 2019 rebuttal to the FORM, which is incorporated in the record as Applicant exhibit (AE) A.

Procedural Ruling

In his response to the FORM, Applicant stated that the information he is "privy to is a low-impact security risk," and that he does not access a classified network or system in the performance of his duties. (AE A.) To the extent that he argues for a more lenient standard than had he been applying for security clearance eligibility, positions designated as ADI or ADP II are classified as "sensitive positions." See Code of Federal Regulations Title 32 – National Defense, part 154.13, and part 154, Appendix J – ADP Position Categories and Criteria for Designating Positions. The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates that trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management (OPM). DOD contractor personnel are afforded the right to the procedures contained in DOD Directive 5220.6, and the standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) pertinent to security clearances, which is whether it is clearly consistent with the interests of the national security. An applicant seeking a

position of trust has his case evaluated under the same standard and adjudicative guidelines and procedures that apply to security clearance cases. See e.g., ADP Case No. 15-04852 at 3 (App. Bd. May 25, 2017).

Evidentiary Ruling

Department Counsel submitted, as Item 4, summary reports of personal subject interviews (PSI) of Applicant conducted in person on December 14, 2015, February 11, 2016, and February 17, 2016; and by telephone on December 15, 16, and 17, 2015. The summary reports were part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary reports did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In a footnote in the FORM, Applicant was advised as follows:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interviews (PSI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to the File of Relevant Material (FORM), you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Applicant submitted a late response to the FORM in which he did not comment about the PSI. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance or trustworthiness

decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary reports, to comment on the interview summaries, and to make any corrections, deletions, or updates to the information in the reports. In the absence of any objections, I accepted Item 4 in evidence, subject to issues of relevance and materiality in light of the entire record.

Administrative Notice

The Government requested administrative notice of several facts pertaining to the Kingdom of Saudi Arabia (Saudi Arabia) (Item 5) and the Republic of Egypt (Egypt) (Item 6), as set forth in respective Request(s) for Administrative Notice, dated October 2, 2019. The request pertaining to Saudi Arabia was based on five publications from the U.S. State Department. The request pertaining to Egypt was based on six publications from the U.S. State Department. I was provided extracts of the cited documents and the URLs where I could obtain the full documents. Applicant did not respond to the FORM, so he is found to have waived any objections to the administrative notice requests or to the facts set forth therein. Appeal Board precedent, set forth in ISCR Case No. 05-11292, dated April 12, 2007, requires that the administrative judge consider the most current political conditions in a foreign country when evaluating Guideline B cases. Accordingly, I reviewed the full text of the publications relied on by the Government for administrative notice, and took administrative notice of the facts set forth below.

Summary of SOR Allegations and Response

The SOR alleges under Guideline B that Applicant's spouse is a dual citizen of France and Saudi Arabia (SOR ¶ 1.a); that Applicant's mother (SOR ¶ 1.b) and one of his sisters (SOR ¶ 1.d) are citizens of Saudi Arabia and reside with him in the United States; that Applicant's father is a citizen of Saudi Arabia residing in Egypt (SOR ¶ 1.c); that Applicant's other sister and his two brothers are dual U.S.-Saudi citizens residing in Saudi Arabia (SOR ¶ 1.e); that Applicant's parents-in-law are dual citizens of France and the United States residing in Saudi Arabia (SOR ¶ 1.f); and that Applicant sought and received on the basis of his Saudi citizenship a \$200,000 scholarship from the Saudi government in 2011 to pursue his bachelor's degree in the United States, which he earned in 2015 (SOR ¶ 1.g). (Item 1.)

When he responded to the SOR, Applicant admitted the allegations, but indicated that Saudi Arabia and France are close allies of the United States; that his spouse and mother are "Green Card" holders (U.S. permanent residency status); and that none of his relatives have any ties to an organization or government that would jeopardize the interests of the United States. Applicant described his father as "a visible man," who owns a film animation studio in Egypt that is releasing its first feature film set to debut in international film festivals. Applicant stated that his sister and brothers in Saudi Arabia have good business opportunities: one brother works for a U.S.-based credit lender; his other brother works for a Saudi oil company; and his sister owns "her own artistic co-working space." Applicant asserted about his college scholarship that he had an

“unbelievable opportunity to attend university for free and have a monthly stipend for living expenses.” He explained that it would have been “irresponsible” of him to decline that opportunity and added that he was only one of hundreds of thousands of Saudis who have benefitted from such a scholarship in the United States. Applicant indicated that he has chosen to live “as a proud American and will continue to live in the United States.” (Item 2.)

Findings of Fact

Applicant’s admissions to the foreign or dual citizenships of his family members; to the Saudi residency of his sister, two brothers, and parents-in-law; to the Egyptian residency of his father; and to his college scholarship from the Saudi government, are accepted and incorporated as findings of fact. After considering the FORM, which includes Applicant’s response to the SOR, and Applicant’s December 30, 2019 response to the FORM (AE A), I make the following additional findings of fact:

Applicant is a 29-year-old dual citizen of the United States and Saudi Arabia. He was born in the United States to Saudi citizens. (Item 3.) The FORM does not contain any explanation for why his parents were in the United States at the time of his birth in 1990. On his June 25, 2019 Questionnaire for National Security Positions (SF 86), Applicant explained that his father was from a royal family in Yemen that was forced to flee the country after its 1962 civil war, and that Saudi Arabia gave the family asylum and allowed his father to keep his family title. (Item 3.) Applicant told an authorized investigator for the OPM on December 14, 2015, that his family emigrated as refugees from Yemen to Saudi Arabia in the 1960s. (Item 4.) His SF 86 indicates that his mother was born in Egypt. (Item 3.)

Applicant has four siblings: two sisters ages 34 and 21 and two brothers ages 38 and 31. According to his SF 86, his 21-year-old sister was born in Egypt while his other siblings were born in the United States. Applicant and his siblings acquired Saudi citizenship through their parents. (Item 3.) Applicant told an OPM investigator that he lived in Egypt and Saudi Arabia as a minor. (Item 4.)

Applicant moved to Saudi Arabia in August 2004 and acquired his Saudi citizenship in approximately July 2006. Applicant acquired a passport from Saudi Arabia in late August 2006, which he renewed over the years. His current Saudi passport expires in December 2021. Applicant traveled extensively on his Saudi passport to countries in the region (Bahrain, United Arab Emirates (UAE), Lebanon, and Egypt) between July 2007 and October 2010. (Items 3-4.)

After passing examinations in Saudi Arabia, Applicant came to the United States. He had recently obtained his U.S. passport on December 4, 2010, and he lived with an uncle in the United States for the next year. According to Applicant, his uncle is a Saudi citizen who has never been employed in the United States and has no affiliation with a foreign government, military, security, defense industry, or intelligence service. Applicant obtained his General Education Diploma (GED) and pursued studies at a community

college until August 2011, when he enrolled in a four-year university in the United States on a full scholarship funded by Saudi Arabia's government. Over the next four years, he also received a monthly stipend of \$1,850 from the Saudi government to cover his living expenses as well as health insurance. Applicant obtained the scholarship based on his Saudi citizenship. While pursuing his bachelor's degree, which he earned in May 2015, Applicant had quarterly contact with a local advisor from the Saudi Arabian Cultural Mission, to whom he had to submit his transcripts. (Items 2-4.) Applicant indicates that he had to meet "certain requirements" while in school, although he did not specify the requirements. He denies any contact with the advisor since he graduated, and there is no evidence to the contrary. (Item 4.)

Applicant went to Saudi Arabia from December 2013 to January 2014 to visit his family and for his engagement celebration to his now spouse. He used his Saudi passport, renewed in July 2011 for another five years, to enter and exit Saudi Arabia. (Items 3-4.) He was issued a personal identity card in Saudi Arabia to facilitate travel between Gulf Cooperation Council countries without a Saudi passport. (Item 4.)

During his last semester in college, Applicant had a part-time, unpaid internship in finance with a real estate developer. (Item 3.) From July 2015 to December 2016, Applicant held full-time employment in the United States as a financial analyst with a defense contractor. He applied for a DOD security clearance at that time, and was interviewed on December 14, 2015, by an OPM investigator. He admitted that he holds dual citizenship and passports with the United States and Saudi Arabia, and that his college degree was paid for by a full scholarship valued at \$200,000 from Saudi Arabia's government. Applicant stated that he would be reluctant to surrender his passport or renounce his citizenship with Saudi Arabia because he feels he would be disrespectful and because several of his family members and his fiancée were living there at the time. Applicant explained that he was considered for a position by a company based in Saudi Arabia (apparently in May 2015 per his SF 86), but he was not interested in working in Saudi Arabia. He expressed "ultimate allegiance" to the United States as his moral compass, ideals, and religion align with the United States. Applicant explained about his travels in the Persian Gulf that he went to Bahrain about 15 to 20 times to go to the movies or to shop because it was only 30 to 40 minutes away from his home in Saudi Arabia; traveled to Egypt to visit his father; went to the UAE to see his brother, who was living there at the time; and went to Lebanon to visit his grandmother, who had an apartment there at the time. He returned to Saudi Arabia only one time since coming to the United States in December 2010, for 21 to 30 days from December 2013 to January 2014 for his engagement ceremony and to visit family members. (Item 4.)

Applicant was contacted by telephone by an OPM investigator on December 16, 2015, to clarify information regarding his relatives and foreign contacts. He provided the full names of his siblings and detailed the extent of his contacts with his cousin, a dual citizen of the United States and Saudi Arabia, with whom he was sharing an apartment. He was re-contacted on December 17, 2015, for further clarification about his parents' names. (Item 4.) There is no indication that he reported to the investigator any plans to travel to Saudi Arabia.

Applicant indicated on a June 2019 SF 86 that he married his spouse in Saudi Arabia on December 25, 2015, but also his “wedding ceremony” was on March 18, 2017. (Item 3.) On February 11, 2016, Applicant was interviewed by a different OPM investigator. Regarding his “fiancée,” Applicant related that she is a dual citizen of Saudi Arabia and France, and that they met ten years ago in Saudi Arabia through a family friend. He indicated that he had almost daily contact with her, by telephone or Internet chat. Because of their relationship, he also had contact with his “future in-laws” once every two weeks by electronic chat. (Item 4.) There is no indication in the record that he told the investigator about any December 2015 marriage in Saudi Arabia.

Applicant met with the same OPM investigator on February 17, 2016, for further details about his foreign contacts. He indicated that his “fiancée” was born in France and works as a graphic designer in Saudi Arabia; that her father was born in Yemen and is employed as chairman of a medical department in a hospital and also as an assistant professor for health sciences; and that her mother is a native of Lebanon and works as a French teacher in Saudi Arabia. Applicant also disclosed that he has monthly contact with his grandmother, who is a homemaker in Saudi Arabia. He explained that none of these foreign nationals knew that he was under consideration for a sensitive position, and that they were not affiliated with a foreign government or military organization. (Item 4.) As with his interview a week prior, there is no indication that he mentioned a trip to Saudi Arabia for his marriage in December 2015.

Applicant left his job for a better-paying position as a help-desk technician with another federal contractor in December 2016. He stayed in that position only through July 2017. In August 2017, he began his current employment as a business analyst with a technology company that contracts with the DOD. (Item 3.)

In January 2018, Applicant traveled to the UAE for his oldest brother’s wedding. In July 2018, Applicant took a “road trip” through three European countries with his spouse and her family. In December 2018, Applicant went to Saudi Arabia for over two weeks to visit his spouse’s family, his grandmother, and his older sister. On December 19, 2018, Applicant’s personal identity card was renewed by Saudi Arabia for another five years. (Item 3.)

Applicant completed an SF 86 on June 25, 2019. He indicated on his SF 86 that he and his spouse married in Saudi Arabia in late December 2015, but also that he traveled to Saudi Arabia in March 2017 for their “wedding ceremony” on March 18. He indicated that they were presently living together in the United States, and that she had a “Green Card” under his sponsorship valid to March 19, 2028. Given U.S. Permanent Resident cards are valid for ten years (see www.uscis.gov), she apparently obtained her Green Card in March 2018. She came to the United States in April 2017. Applicant also indicated on his SF 86 that he has been cohabiting since September 1, 2016, with his mother, who immigrated to the United States under his sponsorship in June 2016, and has a Permanent Resident Card that expires on August 18, 2028, and with his younger sister, who has an I-20 Form for student and exchange visitors and a visa valid to June 24, 2021. His sister, a Saudi citizen, is attending college, and his mother is traveling to

see her mother in Saudi Arabia. Applicant reported that he had contact every other day of late with his father in Egypt, who planned to release a feature film in October 2019. Applicant also disclosed that his older sister and two brothers, who hold dual citizenship with the United States and Saudi Arabia, live in Saudi Arabia, where his sister owns a “co-working space,” and his oldest brother works for an American credit lender. He did not report an employer for his other brother nor report the extent of his contacts with his siblings in Saudi Arabia. Regarding his parents-in-law, who have dual citizenship with France and Saudi Arabia and live in Saudi Arabia, Applicant indicated he had weekly contact with them, primarily through web chat. At least once a month, he called his spouse’s parents through a mobile application. Applicant also listed that he had held a full scholarship to attend college in the United States from Saudi Arabia, and that his younger sister has been receiving a monthly stipend and health insurance from the Saudi government to pay for her college in the United States since August 2018. The estimated total value of her scholarship is \$150,000. Applicant disclosed the names of his former and his sister’s current advisors from the Saudi Arabian Cultural Mission.

As of Applicant’s September 2019 Answer to the SOR, Applicant’s older sister and two brothers were living in Saudi Arabia. Applicant’s sister still owned her own “artistic co-working space,” his oldest brother was still working for the U.S.-based credit lender, and his other brother was employed by a Saudi oil company. Although Applicant expressed that he was thankful to Saudi Arabia for the full scholarship that paid for his college studies in the United States, he stated,

I am thankful to the government of Saudi Arabia for that privilege [of attending university for free in the United States], but as an adult I have never considered living in Saudi Arabia. I have chosen to live as a proud American and will continue to live in the United States. (Item 2.)

Applicant indicated that, over the past four years, he has established a respectable career in which he has developed great relationships and proven himself to be trustworthy. (Item 2.) He presented no corroboration from other individuals attesting to his work performance, commitment to the United States, or other indicators of reliability and trustworthiness.

Administrative Notice

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).

After reviewing the source documents relied on by the Government, I have taken administrative notice of the facts set forth in the Government's October 2, 2019 requests and incorporate them by reference in this decision. For additional background information regarding the two countries relationships with the U.S., I have reviewed the U.S. State Department's respective Bilateral Relations Fact Sheet, issued for Saudi Arabia on November 26, 2019, and for Egypt on September 20, 2019. Of particular note are the following salient facts.

Saudi Arabia is ruled by King Salman bin Abdulaziz Al Saud as both head of state and head of government. Its 1992 Basic Law provides for the system of governance, rights of citizens, and the powers and duties of the government, including that the Quran and Sunna serve as the country's constitution, and that the male descendants of its founder rule the country.

While the country's most recent municipal elections in 2015 were held without any significant irregularities, and women were allowed to vote and run as candidates for the first time, government agents killed and dismembered Saudi journalist Jamal Khashoggi in the Saudi Consulate in Istanbul, Turkey, in October 2018. King Salman pledged to hold accountable all those involved, but by late 2018, the Saudi government's Public Prosecutor's Office had not named 11 indicted suspects. In spring 2019, the U.S. State Department publicly designated 16 officials of the Saudi government as ineligible for entry in the United States because of their roles in the murder of Khashoggi. On December 10, 2019, the U.S. State Department designated Mohammed al Otaibi, former counsel general of Saudi Arabia in Istanbul under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriation Act 2019, as ineligible for entry into the United States because of his involvement in Khashoggi's murder. The State Department urged the Saudi government to conduct a full, fair, and transparent trial of those responsible and to hold those involved accountable. In December 2019, after a trial that was closed to the public and lacked transparency, a Saudi court sentenced five to death in the killing but cleared the two most senior officials implicated, including al Otaibi.

In 2018, other significant human rights abuses included unlawful killings, including executions for nonviolent offenses; forced disappearances; torture of prisoners and detainees by government agents; arbitrary arrest and detention, arbitrary interference with privacy; restrictions on freedom of peaceable assembly, association, and movement; severe restrictions on religious freedom; citizen's lack of freedom to choose their own government; trafficking in persons; and violence and official discrimination against women and members of the LBGTQ community. Saudi law is based on the local interpretation of Sharia law and is influenced by local customs and practices. U.S. citizens are subject to all local laws and authorities may expel, arrest, imprison, and even execute those violating the law, even unknowingly.

A Saudi-led coalition continued to conduct air strikes in Yemen that resulted in civilian casualties and damage to infrastructure. The U.S. State Department's current travel advisory for Saudi Arabia is Level 2 – exercise increased caution – due to terrorism and the threat of missile and drone attacks on civilian targets. U.S. citizens are advised

to not travel within 50 miles of Yemen because of terrorism and armed conflict. The U.S. warns that terrorist groups may attack with little or no warning, targeting both Saudi and Western government interests, mosques and other religious sites, and places frequented by U.S. citizens and westerners. Missile attacks from rebel groups in Yemen have targeted major cities, such as Riyadh and Jeddah; Riyadh's international airport; Saudi Aramco facilities; and vessels in the Red Sea shipping lanes. The airport in Abha, in southeastern Saudi Arabia, has been under frequent attack, and U.S. mission personnel are not allowed to use the airport without Chief of Mission approval.

The United States and Saudi Arabia have had full diplomatic relations since 1940. Saudi Arabia's significant oil reserves and its strategic location and role in the Arab and Islamic worlds have played a role in the longstanding bilateral relationship between the two countries. The United States and Saudi Arabia have a common interest in preserving the stability, security, and prosperity of the Gulf region. The United States regards Saudi Arabia as a strong partner in security and counterterrorism efforts and in military, diplomatic, and financial cooperation. Saudi Arabia is the U.S.' largest customer of foreign military sales, with more than \$100 billion in active sales. Through its foreign military sales, the United States has supported Saudi Arabia's Ministry of Defense, the National Guard, and Ministry of Interior. The U.S.-Saudi partnership is rooted in more than seven decades of close friendship and cooperation, and the two countries enjoy a strong economic relationship. They enjoy robust cultural and ties with some 55,000 Saudi students studying at universities or engaged in cultural exchanges in the United States each year. The United States, in cooperation with the Saudi government, provides technical support in areas such as education, trade, and economic development. Saudi Arabia participates in some of the same international organizations as the United States, such as the United Nations, International Monetary Fund, World Bank, and World Trade Organization.

Egypt is a constitutional republic governed by an elected president and unicameral legislature. Challengers to Egypt's incumbent President al-Sisi withdrew before recent presidential elections in March 2019, some citing political pressure or unfair competition. Some challengers were arrested for alleged violations of candidacy prohibitions for military personnel. Domestic and international organizations expressed concern that government limitations on association, assembly, and expression severely constrained broad participation in the political process. Egypt's parliament approved a state of emergency after an April 2017 terrorist attack on Coptic churches. Egypt was under a government-declared state of emergency for all of 2018. Illegal demonstrations have occurred in Egypt which have turned volatile. The U.S. State Department's Office of Diplomatic Security's *Egypt 2019 Crime & Safety Report: Cairo* indicates that illegal demonstrations have been quashed by Egyptian authorities in a relatively short time, but that, because of the volatility of past demonstrations, peaceful demonstrators and even bystanders may be subject to questioning, detention, arrest, and conviction for participating in or proximity to unauthorized demonstrations.

In 2018, Egypt's most significant human rights issues included arbitrary or unlawful killings, including by government forces or its agents and non-state terrorist groups;

forced disappearances; torture, arbitrary arrest and detention; arbitrary or unlawful interference with privacy; undue restrictions on free expression, the press, and the Internet; substantial interference with the rights of peaceful assembly and freedom of association; restrictions on political participation; and arbitrary arrest and targeting of LGBT persons and other minority groups. Government officials enjoyed a measure of impunity for human rights abuses.

In 2017 and 2018, terrorist organizations, including some affiliates of the self-proclaimed Islamic State (ISIS) terrorist group, carried out deadly attacks on government, civilian, and security targets in Egypt, including on places of worship. While Egyptian authorities investigated terrorist attacks and prosecuted alleged perpetrators, the U.S. State Department's current travel advisory for Egypt is Level 2 – exercise increased caution – due to terrorism. U.S. citizens are advised against travel to the Sinai Peninsula (with the exception of travel to Sharm El-Sheikh by air) or the Western Desert due to terrorism. The U.S. warns that terrorist groups may attack with little or no warning, targeting tourist locations, transportation hubs, markets or shopping malls, and local government facilities, and that there is a considerable risk of terrorist attacks in urban areas, including Cairo, despite a heavy security presence. On May 20, 2019, the U.S. State Department issued a security alert on reports of a roadside bomb attack on a tourist bus resulting in injuries in the area of the museum complex near the pyramids in Giza. Cairo is reported to be at considerable risk of terrorism.

The U.S. seeks to maintain its traditionally close ties with Egypt. Promoting a stable, prosperous Egypt, where the government protects the basic rights of its citizens, continues to be a core objective of U.S. policy. Since 1980, the U.S. has provided Egypt with over \$40 billion in military assistance in furthering the strategic partnership and regional stability, and \$30 billion in economic assistance. Two-way trade in goods between the U.S. and Egypt totaled \$7.5 billion in 2018. American firms are active in most sectors of Egypt's economy, including oil and gas exploration and production, financial services, manufacturing, construction, telecommunications, information technology, and the restaurant and hospitality industry. Egypt and the U.S. belong to some of the same international organizations, such as the United Nations, International Monetary Fund, World Bank, and World Trade Organization.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 national security. Department of Defense contractor personnel seeking a position of trust 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, the administrative judge must consider the disqualifying and mitigating conditions 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 the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is "an examination of a sufficient period and a careful weighing 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. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The 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 that the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The trustworthiness concerns relating to the guideline for foreign influence are articulated 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 that is 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.

Applicant, his spouse, his parents, his siblings, and his parents-in-law all have Saudi Arabian citizenship. Applicant and three of his four siblings also have U.S. citizenship because they were born in the United States, but Applicant spent his youth in Egypt and then Saudi Arabia. He attended high school in Saudi Arabia and obtained a scholarship from the Saudi government that fully paid for his college in the United States.

Although Applicant chose to remain in the United States after he earned his bachelor's degree in May 2015, Applicant's three siblings with dual citizenship reside and work in Saudi Arabia. Applicant's mother and his younger sister currently live with him and his spouse in the United States. His mother is a lawful permanent resident of the United States and his sister is a university student on a scholarship funded by the Saudi government. Applicant's father resides in Egypt, where he is a filmmaker. Applicant's spouse and her parents have dual citizenship with France. While Applicant's spouse immigrated to the United States under his sponsorship in approximately April 2017, and she has U.S. permanent resident status, her parents currently reside in Saudi Arabia.

The Government alleges disqualifying foreign influence trustworthiness concerns because of the foreign citizenships of his close family members; the foreign residency of his father, three of his siblings, and his parents-in-law; and Applicant's receipt of a scholarship totaling approximately \$200,000 from the Saudi government based on his Saudi citizenship, which paid for his college studies in the United States from 2011 to 2015. Applicant's possession of a valid Saudi passport and identity card were not alleged, and so they cannot be considered for disqualification purposes. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in a SOR may be considered, as follows:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for the whole-person analysis under Directive Section 6.3.

Applicant's possession of a valid Saudi Arabian passport and a valid personal identification card that facilitates travel in the Persian Gulf region, and his expressed reluctance to renounce his Saudi citizenship are relevant in assessing the relative strength of his ties to Saudi Arabia and the United States in determining whether, in mitigation under AG ¶ 8(b), he can be counted on to resolve any conflict in favor of the United States, however.

A person is not automatically disqualified from holding a sensitive position because he has relatives with foreign citizenship or they live in a foreign country. However, if any 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). Contacts and connections to foreign citizens are potentially disqualifying if they present a heightened risk under AG ¶ 7(a) or AG ¶ 7(e), or they create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

- (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;

(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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. Moreover, in considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006). A heightened level of scrutiny is warranted when an applicant has a close relationship with relatives who reside in a country where elements hostile to the United States and its interests operate somewhat freely. See *generally* ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017.)

Neither Saudi Arabia nor Egypt are known to target the U.S. for sensitive information or to conduct intelligence operations against the U.S. or its citizens. Both Saudi Arabia and Egypt have traditionally had close ties with the United States. The United States and Saudi Arabia have a common interest in preserving the stability, security, and prosperity of the Gulf region. The United States regards Saudi Arabia as a strong partner in security and counterterrorism efforts and in military, diplomatic, and financial cooperation. Promoting a stable, prosperous Egypt, where the government protects the basic rights of its citizens, continues to be a core objective of U.S. policy. Even so, Guideline B trustworthiness concerns are not limited to countries hostile to the United States. Friendly nations can disagree with the United States over matters that they perceive as important to their national interest or security. See ISCR Case No. 02-22461 (App. Bd. Oct. 27, 2005). A heightened risk exists because of the closeness of Applicant's and his spouse's family ties to Saudi Arabia, and Applicant's ties to his father in Egypt. Applicant clearly has close ties to his spouse and mother. He sponsored both of them for immigration to the United States and lives with them. He did not disclose the frequency of his contacts with his siblings in Saudi Arabia on his June 2019 SF 86, but there is evidence of bonds of affection. He attended the wedding of his oldest brother in the UAE in January 2018. In December 2018, Applicant went to Saudi Arabia for over two weeks

to visit his spouse's family, his grandmother, and his older sister. As of June 2019, Applicant was in contact with his father in Egypt almost daily and with his parents-in-law in Saudi Arabia weekly, primarily through web chat. At least once a month, he called his spouse's parents through a mobile application. He and his spouse traveled in Europe with her parents in July 2018.

Applicant's father-in-law is chairman of a medical department in a Saudi hospital and an assistant professor. While neither position has military, security, or intelligence implications, it is more rather than less likely that his father-in-law would be known to Saudi authorities. Similarly, Applicant's father's work as a filmmaker could raise the attention of Egyptian authorities. Even so, the issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign government or entity based on their prominence or personal situation. The issue is whether an applicant's foreign ties and contacts create a potential vulnerability that a foreign power or terrorists could seek to exploit in an effort to obtain unauthorized access to classified or sensitive information. See ISCR Case No. 03-24933 (App. Bd. July 28, 2005). It is conceivable that undue influence or pressure could be brought to bear on Applicant through his understandably close ties to his immediate family and to his spouse's family. Furthermore, there exists an indirect risk of undue foreign influence because of his spouse's ties to her parents, and to his mother's and younger sister's ties to his father and other siblings living in Egypt and Saudi Arabia, respectively. AG ¶¶ 7(a), 7(b), and 7(e) apply.

Regarding the possible risks of undue foreign influence because of Applicant's sizeable scholarship from the Saudi government, without any evidence that he has any obligations to the Saudi government because of that scholarship, the security concerns set forth in AG ¶ 7(f) are not presently implicated. AG ¶ 7(f) provides:

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or potential conflict of interest.

Applicant has a significant burden of persuasion to demonstrate that he cannot be forced to choose between loyalty to the U.S. and a desire to assist his or his spouse's immediate family members. AG ¶ 8(a) provides for mitigation as follows:

(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.

AG ¶ 8(a) does not apply because the foreign persons involved are immediate family with whom Applicant or his spouse or both has close bonds of affection if not also obligation; there is a significant threat of terrorist activity in Saudi Arabia and Egypt,

including in urban areas; and there are ongoing human rights problems in both countries. The risk of any of his family members being kidnapped may be remote, but government officials in Saudi Arabia have shown that they are willing to detain individuals and even commit murder to silence critics of the monarchy or its conservative policies. Egypt has been under a renewed state of emergency since 2017 because of terrorist attacks. Illegal demonstrations in Egypt have turned volatile, and even bystanders may be subject to questioning, detention, arrest and conviction for proximity to unauthorized demonstrations. Applicant last visited his family in Saudi Arabia in 2018, but his mother went to Saudi Arabia to visit family members in June 2019. Applicant has not expressed an intent to avoid future travel to Saudi Arabia or Egypt. There is no indication that he or his family members have ever been targeted, but the possibility cannot be ruled out.

Regarding AG ¶ 8(b), during his December 14, 2015 OPM interview Applicant expressed “ultimate allegiance” to the United States, stating that his moral compass, ideals, and religion align with the United States. Yet it is difficult to conclude that the bonds of affection and obligation to his immediate family, including his spouse and her parents, are similarly so minimal to satisfy the first part of AG ¶ 8(b), which provides:

(b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, 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.

Regarding whether Applicant has such deep and longstanding relationships and loyalties in the United States that he can be counted on to resolve any conflict in favor of the U.S. interest, his U.S. citizenship was obtained by birth here, but he spent his youth in Egypt and Saudi Arabia. His family was apparently living in Egypt when his younger sister was born in January 1998. He moved to Saudi Arabia in July 2006 and attended school there until he came to the United States in December 2010. While in college in the United States from August 2011 to May 2015, he received a monthly stipend from the Saudi government and health insurance. He qualified for his scholarship covering his college and living expenses from the Saudi government based on his Saudi citizenship. His ties to the United States have strengthened since he earned his bachelor’s degree in May 2015. Applicant chose to pursue his life and career in the United States. He is credited under AG ¶ 8(b) with sponsoring his spouse and mother for U.S. permanent residency, and their U.S. lawful residency somewhat mitigates the risk of undue foreign influence presented by their Saudi citizenship. Even so, he has maintained his Saudi citizenship, and his Saudi passport and identity card. His identity card was renewed in December 2018, years after he had been interviewed by OPM investigators about his foreign connections. As a dual citizen, he is legally entitled to accept benefits or privileges offered by Saudi Arabia, but it undercuts his case with respect to establishing that his ties to the United States are so deep and longstanding that he can be counted on to resolve any conflict in favor of the United States. Applicant presented no evidence from others attesting to his commitment to his work, his involvement in his local community, or other

aspects of behavior that could weigh in his favor with respect to demonstrating that he could not be manipulated or induced to aid a foreign family member.

AG ¶ 8(c) also does not apply. It cannot reasonably be said that his “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.”

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a public trust position by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d), which are as follows:

- (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.

Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

The Appeal Board’s rationale extends to trustworthiness cases as well, given the same standard and guidelines apply. Applicant has no control over his older siblings’ and parents-in-law’s decisions to pursue their lives in Saudi Arabia or of his father’s decision to pursue his career as a filmmaker in Egypt. He told an OPM investigator that his “ultimate loyalty” is with the United States. He indicated in response to the SOR that he has chosen to live as “a proud American” and that he intends to live in the United States. While there is nothing untoward about his relationships and contacts with family members with foreign citizenship or foreign citizenship and residency, his present circumstances are such that he could be placed in an untenable position of having to choose between the interests of a loved one and the U.S. As stated by the DOHA Appeal Board in ISCR

Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Based on the facts and circumstances before me, concerns of undue foreign influence persist.

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.f:	Against Applicant
Subparagraph 1.g:	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 access to sensitive information is denied.

Elizabeth M. Matchinski
Administrative Judge