



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02921  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: I. Charles McCullough, III, Esq.  
02/03/2021

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has three friends who are residents and citizens of Israel, and another friend who is a citizen and resident of Turkey. The security concerns raised by these friendships are mitigated by the casual and infrequent nature of the relationships. Applicant failed to present sufficient information to mitigate the security concern raised by his relationships with his parents-in-law and sister-in-law, who are residents and citizens of Syria. In particular, Applicant failed to provide enough information to evaluate fully the potential security risks raised by his father-in-law’s status as a retired military officer. Clearance is denied.

**Statement of the Case**

On November 27, 2019, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline. The Agency acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. A hearing was initially scheduled for April 28, 2020, but was continued in response to the Covid-19 pandemic. The hearing was rescheduled for September 30, 2020. At the hearing, I admitted as Hearing Exhibits (HE) I – III: the case management order issued on September 4, 2020; the discovery letter the Government sent to Applicant, serving him with the documents supporting the Government's case against him, dated February 12, 2020; and, the letter and exhibit list Applicant submitted in response to the case management order, dated September 30, 2020. I also admitted Government Exhibits (GE) 1 and 2, and Applicant Exhibits (AE) A through P, without objection. I received the transcript (Tr.) on October 19, 2020.

## **Procedural Matters**

### **Request for Administrative Notice**

At the hearing, Department Counsel requested that I take administrative notice of certain facts regarding Syrian Arab Republic (Syria), Israel, and Republic of Turkey (Turkey). I granted the request and have considered information contained in the memoranda and attached documents related to each country, which are appended to the record as HEs IV through VI. (Tr. 17-18)

## **Findings of Fact**

Applicant, 29, has worked for his current employer since June 2018. He completed a security clearance application, his first, in September 2018. At the time Applicant completed the application he was unmarried. However, he listed one foreign national contact, an ex-girlfriend with whom he kept in touch. The DOD CAF did not find this contact to be of security significance. During his January 2019 interview with a background investigator, Applicant disclosed additional foreign contacts to include three friends from Israel and one friend from Turkey. These relationships are alleged in SOR ¶¶ 1.c through 1.f. (GE 1 -2)

### **Turkey**

During the course of obtaining a bachelor's degree in international relations, Applicant participated in a study abroad program in Turkey in 2010. During that trip he developed a friendship with a Turkish citizen. This relationship is alleged in SOR ¶ 1.d. When Applicant returned to Turkey in 2013 to teach English, Applicant lived with his friend's family while he looked for an apartment. Applicant's friend completed his required military service, but is no longer affiliated with the Turkish military or government. He currently works in the tourism industry. The two men communicate at least once per

month by an electronic messaging application. Applicant last traveled to Turkey in 2015. His friend has not traveled to the United States. (Tr. 131, 141-144; GE 1; AE B-C)

Turkey is a constitutional republic with a multiparty parliamentary system and a president. The U.S.-Turkey friendship dates to 1831. Turkey is an important U.S. security partner and has been a valued North Atlantic Treaty Organization (NATO) ally since 1952. Turkey is a leader in the NATO-led Resolute Support Mission in Afghanistan. Turkey also is a vital member of the Counter-ISIL Coalition. Turkey continues to face a significant terrorist threat from both external and home-grown sources. The current U.S. State Department travel warning for Turkey reflects an increased risk from terrorist groups and the potential for violence against U.S. citizens due to an increase in anti-American rhetoric. In the aftermath of the July 2016 coup attempt, the U.S. State Department has also reported a number of significant human rights problems in Turkey. Of particular concern are reports, including arbitrary killings, suspicious deaths of persons in custody, forced disappearances, torture, and the arbitrary arrests and detention of tens of thousands of persons, including opposition members of parliament, lawyers, journalists, foreign citizens, and Turkish nationals with purported claims to “terrorist” groups or engaging in peaceful legitimate speech. (HE VI)

## **Israel**

Applicant returned from Turkey in 2014 to begin a master’s degree program in International Affairs at a U.S. university. During his studies, he befriended a classmate, a U.S. citizen, who subsequently immigrated to Israel in 2017. This relationship is alleged in SOR ¶ 1.e. Applicant’s friend serves in the Israeli Defense Forces. The two men have seen each other twice since their graduation in 2016 at informal class reunions, the most recent being in September 2019. They maintained monthly contact through an electronic messaging application from 2016 until February 2020, when Applicant unilaterally ended the relationship, out of concern that the relationship would adversely affect his ability to gain access to classified information. Applicant admits that his friend is aware of Applicant’s employment with a federal contracting company and that Applicant works on a military installation. According to Applicant, the friend does not know the details of Applicant’s job or his clearance status. (Tr. 136-138, 175; AE B-C)

While participating in a study-abroad program in Israel in 2015, Applicant met a woman at a restaurant with whom he became friends. This relationship is alleged in SOR ¶ 1.c. Before their meeting, the woman had completed her compulsory military service and was working as a human resources professional at a private company. He has not had in-person contact with her since 2015, but the two maintained contact through an electronic messaging application a few times per year. According to Applicant, they have not had any contact in over one year. Applicant described the relationship as casual and superficial. The woman is not aware of Applicant’s employment with a federal contracting company or his attempt to obtain a security clearance. (Tr. 134-136, 175-177; AE B-C)

Applicant also admitted to having another friend, also a citizen of Israel, who was employed by the Israeli Trade Mission in the city where Applicant resides. This relationship is alleged in SOR ¶ 1.f. The two men met through friends and typically

interacted in group settings. Applicant admits that the man knew of his status as the employee of a federal contracting company, and that he worked on a military installation. According to Applicant, the man did not know the details of Applicant's job or his clearance status. Applicant's last contact with the man was in November 2019, when the man returned to Israel. Applicant has learned through mutual friends that the man no longer works for the Israeli Trade Mission. (Tr. 138-140; AE B-C)

Israel is a parliamentary democracy with a unicameral parliament and a prime minister, who exercises extensive executive power. The United States and Israel have maintained diplomatic relations with Israel since 1949 and have always had strong bilateral relations. The United States extends substantial foreign aid to Israel and provides significant military support as well. The United States is also Israel's largest trading partner. Israel cooperates closely with the United States and other countries on counterterrorism issues. Despite its close relationship with the United States, Israel has been involved in numerous instances of illegal export, or attempted illegal export, of U.S. restricted and classified technology and products, including dual-use technology. Israel generally respects the rights of its citizens. When human-rights violations have occurred, they have involved Palestinian detainees or Arab-Israelis. Terrorist suicide bombings are a continuing threat in Israel, and U.S. citizens in Israel are advised to be cautious. Israel considers U.S. citizens with Israeli citizenship or who are eligible for Israeli citizenship to be Israeli citizens for immigration and other legal purposes. Dual U.S.-Israeli citizens must enter and depart Israel using Israeli passports. U.S. citizens visiting Israel who also have or may have Israeli citizenship have been subjected to prolonged questioning and thorough searches by Israeli authorities upon entry or departure. (HE V)

## **Syria**

In July 2019, Applicant married a naturalized U.S. citizen from Syria. In response to interrogatories propounded by DOHA, Applicant provided information about his parents-in-law and sister-in-law who are citizens and residents of Syria. These relationships are alleged in SOR ¶¶ 1.a and 1.b.

The Syrian Arab Republic is ruled by an authoritarian regime dominated by the Socialist Ba'ath Party currently engaged in a full-scale civil war with the armed Syrian opposition. Since 1979, the United States has designated Syria a State Sponsor of Terrorism due to its continuing political and military support to various terrorist groups as well as its support of the Iranian government. Over the past decade, the Syrian government has demonstrated a permissive attitude towards al-Qa'ida and other terrorist groups' foreign fighter facilitation efforts during the Iraq conflict that fed the growth of al-Qa'ida, the Islamic State of Iraq and Syria (ISIS), and affiliated terrorist networks inside Syria. In addition, the Syrian government has engaged in numerous human rights violations to include arbitrary killings and detentions, the use of chemical weapons against civilians, enforced disappearances, torture, arbitrary and unlawful interference with privacy, and undue restrictions on freedom of movement. During 2018, government-linked paramilitary groups reportedly engaged in frequent violations and abuses, including massacres, indiscriminate killings, kidnappings of civilians, arbitrary detentions, and rape as a war tactic. Government-affiliated militia repeatedly targeted civilians. The Syrian

government took no steps to investigate, prosecute, or punish officials who committed human rights violations or abuses. (HE V)

The actions of the Syrian government against U.S. interests is well documented. The Syrian government was aware of, and encouraged for many years, the transit of terrorists through Syria into Iraq for the purpose of fighting U.S. forces. 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 Syria are ineligible to travel or be admitted to the United States under the Visa Waiver program. The exclusion of Syria from waiver eligibility reflects the determination of the Secretary of Homeland Security that the presence of an individual from 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 Syria is a safe haven for terrorists. In September 2017, the Government suspended the entry of Syrian nationals into the United States, citing concerns over significant inadequacies of the country's identity-management protocols, the country's failure to share public safety and terrorism information, and the country's status as the source of significant terrorist threats. U.S. citizens are also warned against traveling to Syria due to concerns about terrorism, kidnapping, and armed conflict. The U.S Embassy in Damascus suspended its operations in February 2012. (HE V)

Applicant's father-in-law, 69, is a retired Syrian military officer. In his October 2019 responses to DOHA interrogatories, Applicant reported that none of his Syrian in-laws had ties to any foreign government, military, or intelligence service. In response to the SOR, Applicant reported that his father-in-law was a retired "Air Force Brigadier." At the hearing, Applicant testified that the term "brigadier" in Arabic did not refer to a flag officer as it does in English and that he was mistaken in using the term. Applicant has never met his in-laws. His communication with them is limited as he does not speak Arabic and his in-laws do not speak English. The information in the record about Applicant's in-laws is based on the testimony of his wife. (Tr. 93, 133-134, 146; GE 2; AE B –C)

Applicant's wife testified that her father retired in approximately 2001, when she was 18 years old. He served in the Syrian military throughout her childhood. She testified that her father graduated from a military academy in Syria and was an officer. Applicant's wife corroborated Applicant's testimony that the term "brigadier" in Arabic is not associated with a general's rank as it is in the American military. However, Applicant's wife could not clarify the nature of her father's job in the Syrian military or his rank upon retirement. Applicant provided AE O, a letter obtained by his wife, from a Syrian organization of retired military members. Applicant presented Applicant both the original letter as written in Arabic and an English translation. The letter indicates that Applicant's father-in-law has been associated with the veteran's organization since at least 2002. The letter, which was signed by a retired general, does not indicate his father-in-law's rank upon retirement. Applicant's wife testified that her father does have some interaction with other individuals associated with the Syrian military. Neither AE O nor Applicant's wife provided details about the extent, frequency, or nature of her father's contact with current or former Syrian military members. Applicant's wife testified that her father receives a

monthly pension of \$50,000 Syrian pounds, which Applicant's wife claims to be valued at \$100 U.S. dollars. Since retiring, Applicant's father-in-law has worked in the real estate industry in Syria. (Tr. 93, 104-114, 112-125, 147; AE O)

Applicant's mother-in-law, 59, currently works as a member of the technical education staff at a Syrian university. Both of Applicant's parents-in-law are members of the Ba'ath Party, which Applicant's wife describes as the default political party. She testified that neither of her parents is politically active. Applicant's wife stated that her parents are financially self-sufficient. They own their home as well as a home in her father's hometown. Applicant's sister-in-law, 25, is a student at a Syrian university. In 2020, Applicant's wife filed petitions with the United States Customs and Immigration Services, seeking permission to sponsor her parents' immigration to the United States. (Tr. 93, 95, 103-104, 118-119, 125-126, 148, 150-157; AE B. N-O).

Applicant's wife typically speaks telephonically to her parents at least once a week and communicates with her sister daily through an electronic messaging application. Since immigrating to the United States in 2008, Applicant's wife has returned to Syria every two years to visit her parents and sister. Her last trip was in 2018. She currently has no plans to return to Syria, citing her concerns about traveling during the Covid-19 pandemic as well as the potential adverse implications of her travel on her husband's security clearance application. The couple discussed meeting Applicant's wife's family in Europe to facilitate their first meeting. However, the couple decided to postpone the trip indefinitely. (Tr. 98-102, 127-128)

Applicant's wife became a naturalized U.S. citizen in 2013. All of her assets are based in the United States. Aside from his in-laws, Applicant's familial ties are all in the United States, as are his assets. (Tr. 97-98, 102, 150, 170, 173, 177-178)

Since college, Applicant has dedicated himself to the study of international relations. As a result, he is well traveled and has developed friendships with people from all over the world. In support of his application for security clearance, four character witnesses spoke on Applicant's behalf. All are long-time clearance holders. All have significant intelligence and counter-intelligence experience. Each witness unequivocally recommended Applicant for a security clearance, citing his professionalism, and his appreciation and understanding of the security concerns related to his position. One witness in particular, a major in the U.S. Army, described the necessity of some clearance holders to have relationships with foreign nationals to further the important work of the United States government. The witness opined that Applicant was able to balance these relationships with his duties as a clearance holder. (Tr, 23-89; GE 1; AE B, E-I)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Foreign Influence**

"[F]oreign contacts and interests . . . are a national security concern . . . if they create circumstances in which the individual may be manipulated or induced to help a foreign person in a way that is inconsistent with U.S. interest or otherwise made vulnerable to pressure and coercion by any foreign interest." (AG ¶ 6) An assessment of foreign contacts and interests should consider the country in which the foreign interest is located, including but not limited to, consideration of whether it is known to target U.S. citizens to obtain classified or sensitive information, or is associated with a risk of terrorism.

The SOR alleges as disqualifying Applicant's friendships with individuals from Turkey, Israel and Syria. The Government established its *prima facie* case that each of the alleged relationships are disqualifying under AG ¶ 7(a):

[C]ontact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Once the Government establishes its *prima facie* case, the burden shifts to Applicant to present witnesses and other evidence to rebut, explain, extenuate, or mitigate facts he has admitted or those established by Department Counsel. Applicant has the ultimate burden of persuasion in obtaining a favorable clearance decision. (DOD Directive, Additional Procedural Guidance ¶ E3.1.15.)

Applicant has met his burden of mitigation regarding his friendships with individuals who are citizens and residents of Turkey (SOR ¶ 1.c) and Israel (SOR ¶¶ 1.d - 1.f). Individuals seeking security clearance eligibility are not required to limit their personal, social, or professional relationships to individuals who are U.S citizens or U.S nationals. Here, Applicant established that he has no affinity toward either Israel or Turkey. He has also established that those friendships are casual and that he is not bound to those foreign nationals by bonds of obligation or affection. The following mitigating conditions apply:

AG ¶ 8(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, or country is also 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. interests; and

AG ¶ 8(c) contact or communication with foreign citizens is so causal and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

However, the same analysis does not apply to Applicant's relationships with his parents-in-law and sister-in-law who are citizens and residents of Syria. The U.S. Government has designated Syria a State Sponsor of Terrorism and has also determined that the Syrian government has a history of acting against U.S. interests. The Government's concerns regarding Syria are such that Syrian nationals are barred from entering the United States at this time, and U.S. citizens are encouraged not to travel to there.

Given the relatively adverse relationship between the two countries, as well as the status of Applicant's father-in-law, a retired Syrian Air Force officer, the security risk remains. The security risk is not mitigated because Applicant has never met his in-laws in person or because they do not speak the same language. Though Applicant may not have any direct ties of obligation to his in-laws, those bonds of obligation are imputed to him through his wife, who maintains close relationships with her parents and sister, as evidenced by the frequency of her contact with her Syrian family through phone calls, messaging applications, and bi-annual visits to her home country.



Application of the foreign influence mitigating conditions also requires consideration of the personal and professional activities of Applicant's in-laws in Syria. The Government placed Applicant on notice in the October 2019 interrogatories that the Government had concerns about his Syrian in-laws. At the hearing, Applicant relied on his wife's testimony to provide information about her family. However, she could not provide any pertinent details about her father's military service to include his rank upon retirement, the nature of his job in the Syrian military, or the nature and extent of his ongoing interaction with other individuals associated with the Syrian military. These missing facts prevent a full assessment of the potential risks associated with this relationship and the extent to which Applicant's father-in-law's status as a retired military officer affects Applicant's mother-in-law and sister-in-law. This missing information also prevents the application of any of the foreign influence mitigating conditions to these relationships.

In reaching this conclusion, I have also considered the whole-person factors in AG ¶ 2(d). A finding that Applicant failed to mitigate the security concerns raised by his relationship with his Syrian in-laws does not suggest that Applicant is untrustworthy or unreliable. It is not a finding that Applicant is unable to follow the rules regarding the proper handling and safeguarding classified information. It is a finding necessitated by the limited information in the record. Without more information, Applicant's close ties to Syrian citizens presents an unacceptable risk that he may be influenced to act inconsistent with U.S. interests, and creates doubt about his suitability for access to classified information. Ultimately, any unresolved questions or concerns must be resolved in favor of protecting the national security.

### **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, Foreign Influence	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraphs 1.c – 1.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge