



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 21-00412
)
 Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 28, 2020. On April 2, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on May 6, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on June 18, 2021. On June 22, 2021, a complete copy of the file of relevant material

(FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 9, 2021, and did not respond. The case was assigned to me on September 22, 2021.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Yemen. The request and supporting documents were not admitted in evidence but are attached to the record as Hearing Exhibit (HX) I. I granted Department Counsel's request in part.

I declined to take administrative notice of facts set out in HX I that are based on a publication from the Congressional Research Service. "Pronouncements about the relationship between the United States and any given foreign country are committed to the President of the United States and other duly authorized Executive Branch officials." ISCR Case No. 02-00318 at 5 (App. Bd. Feb. 25, 2004). The Congressional Research Service provides research and analysis for Congress, not the Executive Branch. There is nothing in the record reflecting that the findings of fact and analysis by the Congressional Research Service have been adopted by the Executive Branch. While publications of the Congressional Research Service may qualify as learned treatises, they are not pronouncements from the Executive Branch and do not bind an administrative judge.

On my own motion, and without objection from either party, I have taken administrative notice of the facts recited in the U.S. Department of State Fact Sheet, *Bilateral Relations with Yemen*, dated December 30, 2020, which can be found at www.state.gov/u-s-relations-with-yemen. The fact sheet is attached to the record as HX II. The facts administratively noticed in response to the request from Department Counsel and those based on my own motion are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 56-year-old native of Yemen. He earned a bachelor's degree in 1989 from a university in Yemen. He came to the United States in August 1983 under a cultural exchange scholarship and attended a U.S. university. (FORM Item 4 at 3.) He earned three master's degrees and a doctorate from a U.S. university in 2005.

Applicant married in 2000, divorced in 2006, and remarried in 2014. He became a U.S. citizen in 2011. His wife is a citizen of Yemen and a permanent resident of the United States. (FORM Item 4, Subject Interview at 8.) He has two adult children from his first marriage and a two-year-old daughter from his current marriage, who is a native-born U.S. citizen. His two adult children were born in the United Arab Emirates and are citizens and residents of the United States. He was employed by a state university with federal

contracts from October 2011 to November 2015. He was employed by a federal contractor as a senior translator November 2016 to December 2018. He worked for federal contractors from March 2005 to September 2010 as an Arabic instructor. (FORM Item 3 at 19-26.) He is currently a self-employed freelance translator.

Applicant applied for a security clearance in 2011, but his application was denied. During his counterintelligence-focused screening interview, he told the interviewer that he believed his application was denied because of money he sent to his brother and nephew in Yemen. (FORM Item 4 at 10.)

Applicant's mother and father are deceased. (FORM Item 3 at 32-33.) His older brother, one half-sister, two stepmothers, mother-in-law, and father-in-law are citizens and residents of Yemen. Another half-sister is a citizen and resident of Djibouti. His younger brother is deceased. (FORM Item 3 at 35-36, 41-42; FORM Item 6.)

Applicant has regular contact with his older brother about twice a week. (FORM Item 4, subject interview at 6.) He had occasional contact with his stepmother while his father was alive, but virtually no contact since his father passed away in 2017. (FORM Item 3 at 35.) He has contact with his other stepmother only when he visits Yemen. (FORM Item 3 at 40.) He has weekly contact with his two half-sisters. (FORM Item 3 at 42-43.) He has telephonic contact with his father-in-law three or four times a year. (FORM Item 3 at 45.) He has no contact with his mother-in-law, except through his wife. (FORM Item 3 at 46.)

Applicant's financial interests in Yemen, alleged in SOR ¶¶ 1.e-1.j, are as follows:

SOR ¶ 1.e: partial ownership in four apartments worth about \$50,000;

SOR ¶ 1.f: 33% interest in four store spaces worth about \$50,000, rented for about \$1,000 to \$1,500 per month and managed by his brother;

SOR ¶ 1.g: 50% interest in a warehouse and surrounding lot worth between \$100,000 and \$150,000, which is rented for between \$5,000 and \$10,000 per year;

SOR ¶ 1.h: 33% interest in a vacant lot worth between \$5,000 and \$10,000;

SOR ¶ 1.i: ownership of a farm worth between \$5,000 and \$10,000;

SOR ¶ 1.j: 33% interest in a three-story house worth between \$30,000 and \$35,000; and

SOR ¶ 1.k: monthly rental income of about \$1,000 to \$1,500 from the properties in SOR ¶¶ 1.e and 1.f, which are managed by his brother.

Applicant and his brother inherited property in SOR ¶ 1.g from their father. The property was sold for about \$800,000 and the proceeds were distributed Applicant's father's children, and Applicant received about \$50,000.

Applicant has owned his home in the United States since June 2006. (FORM Item 3 at 15.) During his counterintelligence-focused screening interview, he described his financial status as "stable," and told the interviewer that he was "doing very well." His credit report reflected no derogatory information. (FORM Item 5 at 14.) He provided no other information about his financial assets.

I have taken administrative notice that the United States has had a long on-and-off relationship with Yemen, due to internal struggles for power in Yemen. The United States established diplomatic representation in North Yemen in 1959 and in South Yemen in 1967. Military leaders in North Yemen overthrew the monarchy and established the Yemen Arab Republic, which the United States recognized in 1962. The Yemen Arab Republic severed relations with the United States in 1967 in the wake of the Arab-Israeli conflict. Diplomatic relations with the Yemen Arab Republic were reestablished in 1972. North Yemen and South Yemen temporarily reunified in 1990, and the United States established relations with the united country.

A civil war broke out in 1994 over reunification issues. After reunification, Ali Abdullah Saleh, the former president of the Yemen Arab Republic, was elected president of the unified Yemen. President Saleh stepped down in early 2011, and Abdo Rabo Mansour Hadi was elected president for a two-year transition period in February 2012, Yemen's peaceful political transition ended in 2014, when the Houthis seized control of the government and forced the established government into exile. The country remains deeply divided, with pockets of ongoing violent conflict. The Houthis continue to control much of the northwest, including Yemen's capital city, Sana'a. Meanwhile, the legitimate Republic of Yemen Government (ROYG) re-established a presence in southern Yemen, including the port city of Aden. Amid rising tensions between the Houthis and ex-President Saleh, sporadic clashes erupted in mid-2017, and Houthi forces killed Saleh in early December 2017. Beginning in June 2018, ROYG forces, supported by their coalition partners, have sought to wrest control from Houthi forces occupying the port of Hudaydah on the Red Sea. Houthi forces have launched multiple rocket and ballistic missile attacks into the territory of the Kingdom of Saudi Arabia and toward Red Sea shipping lanes, further increasing tensions in the region.

The ongoing conflict has exacerbated already high levels of need in Yemen, pushing the country to a humanitarian crisis. The UN estimates that more than 24 million people, or nearly 80 percent of the entire population, are in need of humanitarian assistance, more than any other single country today. The U.S. government provided more than \$630 million in humanitarian assistance to Yemen in fiscal year 2020 and supports a small number of health, education, and recovery assistance activities to help households and social service delivery systems cope with the effects of the conflict and prepare for the post-conflict

recovery. However, the insecure operating environment and ongoing bureaucratic impediments continue to limit development programming.

Yemen has significant human rights issues. Impunity of security officials is a problem, in part because the government exercised limited authority and in part due to lack of effective mechanisms to investigate and prosecute abuse and corruption. The United States suspended diplomatic operations in Yemen in February 2015, and the U.S. Ambassador to Yemen maintains diplomatic engagement with Yemen from Riyadh, Saudi Arabia. Yemen maintains an embassy in the United States. The U.S. State Department has issued a Level 4 (Do not Travel) warning for Yemen, due to terrorism, civil unrest, health risks, kidnapping, armed conflict, and landmines.

Policies

“[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual maybe 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.

Guideline B is 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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The following disqualifying conditions under this guideline are relevant:

AG ¶ 7(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;

AG ¶ 7(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;

AG ¶ 7(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; and

AG ¶ 7(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 personal conflict of interest.

AG ¶¶ 7(a), (e), and (f) all require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. *See, e.g.*, ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. *See, e.g.*, ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019). It is a level of risk one step above a State Department Level 1 travel advisory (“exercise normal precaution”) and equivalent to the Level 2 advisory (“exercise increased caution”).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

The presence of Applicant's brother, half-sister, two stepmothers, mother-in-law, and father-in-law in Yemen are sufficient to raise AG ¶¶ 7(a) and 7(e). He has not rebutted the presumption that he has ties of affection for or obligation to his mother-in-law and father-in-law.

Applicant has significant real estate holdings in Yemen and has monthly rental income of about \$1,000 to \$1,500 from his rental properties in Yemen. The property alleged in SOR ¶ 1.g has been sold and no longer raises a security concern.

SOR ¶ 1.k alleges the rental income from the properties alleged in SOR ¶¶ 1.e and 1.f. As such, it duplicates SOR ¶¶ 1.e and 1.f. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in the applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.k for Applicant.

The allegations in SOR ¶¶ 1.e, 1.f, and 1.h-1.j are established by Applicant's admissions. The civil unrest, terrorism, armed conflict, ineffective government, and poor human rights record in Yemen establish the heightened risk required to establish AG ¶ 7(f). His SCA reflects that he owns his home in the United States, but he has not provided any other information about his assets in the United States.

The following mitigating conditions are potentially applicable:

AG ¶ 8(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(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;

AG ¶ 8(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; and

AG ¶ 8(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.

AG ¶ 8(a) is not established. The presence of Applicant's family members in Yemen precludes a finding that Applicant is unlikely to be placed in a position of having to choose between the interests of his family members and the interests of the United States.

AG ¶ 8(b) is not established. Although Applicant has strong ties to the United States, he also has strong ties to Yemen. Applicant has the burden of showing that his ties to the United States are so strong that he can be expected to resolve any conflict of interest in favor of the United States. He has not met that burden.

AG ¶ 8(c) is established for Applicant's communications with his two stepmothers and his mother-in-law, with whom he has very little contact. It is not established for Applicant's contacts with his two half-sisters and his brother. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted that presumption for his two half-sisters and his brother.

AG ¶ 8(f) is not established. The value of Applicant's property interests in Yemen is substantial. Although he owns a home in the United States, he has provided no information about his assets in the United States.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has significant ties to the United States. He has worked for federal contractors, state government institutions, and private employers for many years, apparently without incident.

However, he has maintained strong family and financial connections with Yemen. During his counterintelligence screening interview, he acknowledged that his financial connections to Yemen probably kept him from obtaining a clearance in 2011, but he has maintained those connections, and he submitted no evidence of efforts to mitigate the security concerns raised by them. “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.” ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991).

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his family and financial connections to Yemen.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a-1.f and 1.h-1.j:	Against Applicant
Subparagraphs 1.g and 1.k:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge