



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



In the matter of:)
)
) ISCR Case No. 20-02505
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to mitigate security concerns related to some of his family members, who are citizens and residents of the West Bank, Palestine. Guideline B (foreign influence) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 17, 2019, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (SF 86) or security clearance application (SCA). (GE 1) On January 6, 2021, the Department of Defense (DOD) Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF), issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline B. (HE 2)

On January 20, 2021, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On April 1, 2021, Department Counsel was ready to proceed. On November 19, 2021, the case was assigned to me. On January 10, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for January 28, 2022. (HE 1)

Department Counsel provided two exhibits, and Applicant provided one 32-page exhibit. (Transcript (Tr.) 16-17; Government Exhibit (GE) 1-GE 2; Applicant Exhibit (AE A)) There were no objections and all exhibits were admitted into evidence. The transcript was received on February 4, 2022.

Legal Issues

Department Counsel requested administrative notice concerning “Israel: West Bank and Gaza.” (Tr. 17-19; HE 4) Applicant clarified that he did not have anything to do with the Gaza Strip or groups such as Hamas; however, he did not otherwise object to Department Counsel’s request for administrative notice. I granted Department Counsel’s motion, subject to Applicant’s clarifications. (Tr. 17-19) Parts of the request are quoted without attribution in the West Bank, Palestine section, *infra*. In this decision, “Palestine” in this decision means the “West Bank of Palestine,” unless otherwise stated.

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).

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

Findings of Fact

In Applicant’s SOR response, he admitted all of the SOR allegations with clarifications. (HE 3) He also provided mitigating information. (*Id.*)

Applicant is a 40-year-old U.S. citizen who seeks a security clearance. (Tr. 6, 35; GE 1) He has been working for a DOD contractor in support of the Navy as a mechanical engineer since March of 2019. (Tr. 8, 41-42) In 1999, he graduated from high school. He has not served in the military of any country. (Tr. 6) In 2007, he married, and in 2011, he divorced. (Tr. 6-7; GE 1) In August 2016, he was engaged, and in 2017, he married. (Tr. 7; AE A at 28) His spouse is pregnant and expecting twins. (Tr. 7-8) In 2018, he received

a bachelor's degree at a U.S. university where he majored in mechanical engineering. (Tr. 7-8) He has earned multiple certifications and plans to obtain a master's degree. (AE A at 19-21)

Foreign Influence

SOR ¶¶ 1.a through 1.d allege Applicant's mother, one brother, six sisters, and mother-in-law are citizens and residents of Palestine. (HE 2) SOR ¶ 1.e alleges Applicant's spouse is a citizen of Palestine. (*Id.*)

Applicant was born in Palestine, and he lived there through high school. (Tr. 35; AE A at 1) In July 2005, his father passed away, and in September 2005, he moved to the United States. (Tr. 32, 35; AE A at 3, 24) In 2014, he became a U.S. citizen. (Tr. 35) He maintained his Palestinian citizenship and retained a Palestinian passport. (Tr. 35; AE A at 8) His Palestinian passport makes it easier for him to visit his mother in Palestine. (Tr. 36)

Applicant communicates with his mother on a daily basis. (Tr. 45; SOR response) He communicates with his mother-in-law about monthly. (Tr. 46) His mother-in-law is a permanent resident of the United States; however, she is currently in Palestine. (Tr. 46) His spouse became a U.S. citizen in 2021. (Tr. 63; AE A at 12) His spouse communicates with her mother about twice a week. (Tr. 61) His father-in-law has passed away. (Tr. 61)

Applicant's brother does construction work in Israel, and he travels from the West Bank to Israel for work. (Tr. 40-41) Applicant communicates with his brother in Palestine about twice a week. (Tr. 44) Applicant's other brother lives in the United States with his spouse and children. (Tr. 41; AE A at 14)

Five of Applicant's six sisters live in Palestine, and one sister lives in Israel. (Tr. 47-48) One of his five sisters is likely to move to the United States to live with her fiancé after they are married. (Tr. 47-48) Three of his sisters live with his mother in Palestine, and he has frequent contact with them. (Tr. 50) He has weekly contact with his other two sisters who live in Palestine. (Tr. 50) None of his family members in Palestine are government employees or serve in the military. (Tr. 50-54)

Applicant's spouse has three siblings who are citizens and residents of the United States. (Tr. 46) She has one sibling who lives in Palestine with her mother. (Tr. 57)

Applicant traveled to Palestine from the United States in 2009, 2013, 2014, 2016, 2017, and July 2021 (24 days). (Tr. 36; AE A at 15-18) In November 2021, his spouse went to Palestine for surgery because it is less expensive than in the United States. (Tr. 44-45, 58) She is staying with Applicant's mother. (Tr. 60) She remained in Palestine after her surgery for medical reasons. (Tr. 45; AE A at 31) She wishes to return to the United States once she is safely able to travel. (Tr. 56) She may return to the United States in March 2022. (Tr. 59)

Applicant has never had any problems with Palestinian or Israeli authorities. (Tr. 34, 37-38) His communications with family members in Palestine are casual and focused on family matters such as his mother's health. (Tr. 34) His family in Palestine does not travel to Gaza, which is a much more dangerous place than Palestine. (Tr. 57-58; HE 4)

Applicant's bank account and home are in the United States. (Tr. 37-38, 55; AE A at 20) He has a limited right to property in Palestine because he and his siblings inherited land and a home from his father. (Tr. 38-39)

Applicant has never been arrested, and he pays taxes to the U.S. Government. (Tr. 62) He votes in U.S. elections. He describes himself as a reliable and responsible person. (Tr. 32-33) He said "[I] love America. I love being here. I love [to] serve the Navy, [and] do what I do in my job. I love my job, and I never complain. It's a lot of opportunities, a new day. It's a new challenge and really I love it." (Tr. 32) He describes himself and his spouse as Americans, and he plans to raise his children as Americans. (Tr. 62) He is completely loyal to the United States. (Tr. 62) He efficiently provides safety measures at his workplace for employees. (Tr. 32) He has been promoted at work, received a bonus, and achieved some certifications. (Tr. 32-33, 43) He will have additional opportunities at work if he receives a security clearance. (Tr. 32-33)

Character Evidence

Eight character witnesses, including his spouse, coworkers, a neighbor, friends, and his supervisor, made statements supporting his access to classified information. (Tr. 22-30; AE A at 26-30, 32) The general sense of their statements is that Applicant is trustworthy, reliable, professional, diligent, conscientious, loyal, intelligent, compliant with rules, and honest.

West Bank, Palestine

There have been no national elections in the West Bank since 2006. Palestinian Authority (PA) President Mahmoud Abbas has remained in office despite expiration of his term in 2009. The Palestinian Legislative Council has not functioned since 2007. As of September 23, 2020, the U.S. Department of State Travel Advisory for the West Bank was Level 3, because of COVID-19 restrictions, terrorism, and civil unrest. Terrorists may attack with little or no warning targeting tourist locations, transportation hubs, markets, shopping malls, and local government facilities. Multiple terrorist organizations have a presence in the West Bank. These groups often express anti-U.S. sentiments. The PA engages in numerous human rights violations. The PA has taken some steps to address abuses and impunity.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control

access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying in this case:

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

(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.

Applicant has the following Palestine family connections alleged in the SOR: his mother, brother, six sisters, and mother-in-law are citizens and residents of Palestine; and his spouse was a citizen of Palestine as of the date the SOR was issued. She became a U.S. citizen in 2021.

One of Applicant’s six sisters moved to Israel, and she is not subject to the same risks from terrorists as the rest of his family living in Palestine. Applicant has frequent contacts with his relatives in Palestine. There is no evidence that any of his family members have any connection to Gaza or that his family is involved with terrorists.

The mere possession of close family ties with people living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of that applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). 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 familial ties 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 coercion. "[T]he nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (App. Bd. May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Palestine with the United States and the situations involving terrorists and insurgents in that country place a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in Palestine or visiting Palestine does not pose a security risk because of the risks due to terrorist activities in that country. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting someone living in or visiting Palestine.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. July 28, 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security concerns because those ties and contacts create a potential vulnerability that a foreign power, [criminals, or terrorists] could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

Guideline B security concerns are not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Palestine seek or have sought classified or economic information from or through Applicant, his family, or contacts, nevertheless, this future possibility continues to warrant concern. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Palestine has a significant problem with terrorism and crime. Applicant's family in that country "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with people who are living in Palestine or visiting Palestine create a potential conflict of interest because terrorists could place pressure on his family living in that country in an effort to cause Applicant to compromise classified information. Those relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with people living in Palestine and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As indicated in the disqualifying conditions Foreign Influence section, *supra*, Applicant has several relatives who are citizens and residents of Palestine. He has frequent contacts with those relatives. His contacts with them increase the risk that they could be targeted to put pressure on Applicant to provide classified information.

The Appeal Board has concluded that contact every two months or three months constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See *also* ISCR Case No. 04-09541 at 2-3 (App. Bd. Sept. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent and stating "The frequency with which Applicant speaks to his family members in Iran does not diminish the strength of his family ties."). Frequency of contact is not the sole determinant of foreign interest security concerns. "[I]nfrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family as well as his or her spouse's immediate family." See ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019).

Applicant's SOR does not allege that Applicant frequently traveled to Palestine and that his spouse was in Palestine at the time of his hearing. 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 an SOR may be considered, stating:

(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 whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR information discussed in this paragraph will not be considered except for the five purposes listed above.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." His relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Palestine. Applicant has lived in the United States since 2005, except when he was visiting Palestine. In 2014, he became a U.S. citizen, and in 2021, his spouse became a U.S. citizen. He has a U.S. passport. He owns a residence in the United States. He earned a bachelor's degree in the United States and was awarded multiple certifications. He votes in U.S. elections, and he pays U.S. taxes. He has a U.S. bank account. He has had DOD-related employment since 2019.

These factors are balanced against his relationships with family in Palestine, and his relatives in Palestine are at risk from criminals, terrorists, and human rights violations of the Palestinian government. Applicant's access to classified information could add risk to his relatives living in Palestine. There is no allegation that he would choose to help the Palestinian Government or terrorists against the interests of the United States. A guideline B adjudication is not a judgment on an applicant's character or loyalty to the United States. It is a determination as to whether an applicant's circumstances foreseeably present a security risk. See ISCR Case No. 19-00831 at 5 (App. Bd. July 29, 2020). The concern here pertains to the risk to his relatives living in Palestine and does not relate to his loyalty or patriotism to the United States.

Applicant has not rebutted the concern arising from his relationships with family in Palestine. His frequent communications with them and travel to Palestine are factors indicating his care and concern for their welfare and his affection for them. His connections to the United States, taken together, are insufficient to overcome the foreign influence security concerns under Guideline B.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 40-year-old U.S. citizen who seeks a security clearance. He has been working for a DOD contractor in support of the Navy as a mechanical engineer since March of 2019. In August 2016, he was engaged, and in 2017, he married. His spouse is pregnant and expecting twins. In 2018, he received a bachelor's degree at a U.S. university where he majored in mechanical engineering. He has earned multiple certifications and plans to obtain a master's degree.

Applicant has important connections to the United States as discussed under Guideline B. His U.S. citizenship in 2014, and his spouse's U.S. citizenship are the most important connections to the United States. He has made a strong commitment to his life and future in the United States. Eight character witnesses, including his spouse, coworkers, a neighbor, friends, and his supervisor, made statements supporting his access to classified information. The general sense of their statements is that Applicant is trustworthy, reliable, professional, diligent, conscientious, loyal, intelligent, compliant with rules, and honest.

The reasons for denying Applicant's security clearance are more persuasive. A Guideline B decision concerning Palestine must take into consideration the geopolitical situation and dangers in that country. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion); ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing grant of security clearance because of terrorist activity in the West Bank). Palestine is a dangerous place because of violence from terrorists, and the Palestine government does not respect the full spectrum of human rights. Palestine continues to be a very dangerous and unstable country. While Palestine has shown some

improvements, terrorists continue to threaten the interests of the United States, and those who cooperate and assist the United States.

From 2009 to present, Applicant went to Palestine six times, including in July 2021 for 24 days after the SOR was issued. His spouse was in Palestine for surgery and medical reasons at the time of his hearing. Applicant frequently communicates with his spouse, mother, and five siblings living in Palestine, which demonstrates his concern for their welfare. Concern for and loyalty to relatives is a positive character trait. Applicant did not meet his burden of showing that his relatives in Palestine are unlikely to come to the attention of those interested in acquiring U.S. classified information. "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." ISCR Case No. 17-01979 at 5 (App. Bd. July 31, 2019).

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate foreign influence security concerns.

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 through 1.e:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge