



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



In the matter of: )  
)  
) ISCR Case No. 20-02265  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Department Counsel  
For Applicant: *Pro se*

August 2, 2022

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**Decision On Remand**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On December 3, 2018, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). On September 6, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E, Personal Conduct and Guideline B, Foreign Influence. The action was taken under Executive Order 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) dated June 8, 2017.

Applicant answered the SOR in September 9, 2021. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On December 9, 2021, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six exhibits, was sent to the Applicant and received on November 16, 2021. The FORM notified

Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM on January 14, 2022, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. DOHA assigned the case to me on March 1, 2022. Items 1 through 6 were admitted into evidence, and are hereinafter referred to as Government Exhibits 1 through 6. An adverse decision was issued on April 27, 2022. The Appeal Board remanded the decision on July 8, 2022, based on a procedural defect. A new decision is issued to correct the identified procedural defect.

### **Request for Administrative Notice**

The Government requested I take administrative notice of certain facts relating to the country of Saudi Arabia. Department Counsel provided a 6-page summary of the facts, supported by 6 Government documents pertaining to Saudi Arabia. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. (HE-I) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant is 57 years old. He is married and has four young-adult children. He has a Bachelor's degree. He is self-employed as an Arabic Linguist Consultant. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline E – Personal Conduct**

Applicant was born in Saudi Arabia in June 1964. He entered the United States in December 1984. He became a naturalized U.S. citizen in April 1989. From November 2015 to the present, Applicant has been an independent contractor working as an Arabic linguist.

In 2003, Applicant served as a linguist in Iraq during Operation Iraqi Freedom. He states that he worked under some of the most dangerous conditions, and provided linguistic support to our Army under bombing and shelling. In spite of the risks involved, the harsh living conditions, and constant fear for his life, he states that he stood his ground, and contributed his best to help our mission. (Applicant's Exhibit A.)

1.b. While working as an interpreter in Iraq alongside our U.S. Army, Applicant states that he defended the U.S. Army against any accusations brought forward by local Iraqis. When the Abu Ghraib events were made public, Applicant was devastated. He states that he felt cheated and let down by the U.S. Army's conduct. Out of pure frustration and disappointment, he forwarded pictures (contained in an e-mail that he received from a high school friend), without reading the Arabic text contained in it, to his coworkers and colleagues, who were U.S. citizens. The e-mail contained pictures of prisoners being tortured by their captors. The pictures were upsetting to the Applicant. Applicant

also added some written comments and sent them along with the pictures that said something to the effect, "This is not the freedom we came to deliver. Our tax money should not be used this way. Shame on you George Bush." Applicant states that in May 2004, he was removed from the project and told to return to the United States. He refused to do so without explanation as to why he was being removed. Applicant did not understand why he was being removed. He states that upon his return to the United States, he was able to read the e-mail in its entirety for the first time, and realized that the text was written in Arabic in a very hateful, resentful and threatening language toward the United States, its Army, and its citizens. Applicant was terminated from an Intelligence Agency contractor for forwarding this e-mail containing hateful and threatening language toward the U.S. and its citizens. (Applicant's Exhibit A.)

1.a. From October 2013 to November 2015, Applicant worked as a Healthcare Interpreter for a clinic. While working for this employer, Applicant was investigated for sending inappropriate images and texts to other Arabic-speaking employees. The text stated, "This prayer to Allah to take revenge on each and everyone (sic) of Islam's enemies and wishing the most severe torture and punishment on them in this life and also the other life hereafter." Applicant was investigated for this misconduct and found culpable. Applicant stated that the content of the text also included a picture of an adult standing on the neck and private area of an infant. The caption above it stated in Arabic... "the Muslim children of Burma, their only guilt is that they are Muslims". The Applicant then added his personal comments, stating in Arabic, (sic) " ALLh/God is our savior and upon him we depend, to ALLh we belong and to Him we shall return, and no might nor power except that by ALLh, Dear God Who Is ALL Powerful, Mighty, Vengeful, Great, Just, True and the One and Only, we ask You by Your Glorious name, to make us witness your amazing power and fierce torment against all those who are the enemies of Islam, soon not later, in this life and the Hereafter. And to give glory to Islam and Muslims, Amen." (Applicant's Exhibit A.)

Applicant does not believe that his comments targeted anyone specifically, nor did it express hate, harm or a threat to anyone. He believes that the text was taken out of context and given the wrong and unintended meaning. (Applicant's Exhibit A.)

While working for the same employer, Applicant was also investigated for misusing the time clock. On a number of occasions, Applicant would clock into work and then leave to park his car. Applicant was either suspended or terminated in about November 2015, for time card fraud. (Government Exhibits 3 and 4.) Applicant states that his corrective action for his time card fraud was a suspension from work from November 4, 2015 to November 9, 2015. (Government Exhibit 5.) He believes that his employment ended from the company for violating company policy, namely for working off the clock. Applicant stated that after working his regular scheduled hours, he would at times, clock out and continue working, to complete pending work and urgent transactions, which he found was against company policy. Applicant states that he was not compensated for this work. He states that he did not know that he was doing anything wrong. He states that the reason he was working off the clock was to avoid putting in for over-time and to help his department keep expenses down. (Applicant's

Exhibit A.) In either case, Applicant was not following the company rules and regulations and was terminated from the job.

1.c. During his interview with the OPM investigator on March 2019, Applicant admitted to using fictitious dates of birth when using various dating websites like Match.com., despite being married. His wife is unaware of his propensity for visiting dating websites. (Government Exhibit 4.)

### **Guideline B – Foreign Influence**

Applicant has close ties with several family members who reside in Saudi Arabia. Applicant's brother is a citizen of Jordan and a resident of Saudi Arabia. His sister is a citizen and resident of Saudi Arabia. His mother-in-law was a citizen of Egypt and a resident of Saudi Arabia. His brother-in-law is a citizen of Canada and a resident of Saudi Arabia.

Applicant states that he is loyal and dedicated to the United States. He states that his relatives in Saudi Arabia are normal middle-class citizens with no government affiliations. He states that he has no communication of any sort with one of his brother since 2003, as they are no longer on good terms due to financial disputes. (Applicant's Exhibit A.) However, Applicant has another brother, who used to live in Jordan, but now lives in Saudi Arabia. Applicant has weekly communication with him via text message using the social media application, What's App. This brother works as a computer software consultant. (Government Exhibit 4.) Applicant also maintains regular contact with his sister in Saudi Arabia, via text message by using What's App. (Government Exhibit 4.) Applicant's mother-in-law is deceased and does not pose a security risk. (Applicant's Exhibit A.)

Since Applicant still maintains regular contact with his sister, a brother, and his brother-in-law, who reside in Saudi Arabia, it is assumed that he has feelings of affection and obligation to them. The conditions in Saudi Arabia are unpredictable and often volatile and dangerous. Given Applicant's past behavior, where his character has battled some conflict with what is going on in Saudi Arabia and the reaction of the United States, these foreign contacts may pose a risk to the national security.

### **Notice**

I have taken administrative notice of the following information concerning the country of Saudi Arabia. The Kingdom of Saudi Arabia is a monarchy ruled by King Salman bin Abdulaziz Al Saud, who is both head of state and head of government. The 1992 Basic Law sets out the system of governance, rights of citizens, and powers and duties of the government, and it provides that the Quran and Sunna (the traditions of the Prophet Muhammad) serve as the country's constitution. The U.S. Department of State has issued a Level 4 Travel advisory to warn travelers not to travel to Saudi Arabia due to the threat of missile and drone attacks on civilian facilities perpetrated by Iran and Iran-supported militant groups. Many terrorist groups continue to plot attacks in Saudi

Arabia, including arbitrary detentions and other significant human rights issues. (Government Exhibit 6.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

### Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of;

(2) any disruptive, violent or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

Applicant has exhibited a pattern and practice of questionable judgment demonstrated by the serious nature of the language and texts (emails) that he has sent to fellow Muslims and to U.S. citizens in the workplace. On more than one occasion he has emailed hateful, threatening, or inappropriate text messages to fellow employees about the U.S. to express his dissatisfaction with various events.

In 2015, he engaged in similar conduct, when he sent a prayer text threatening to take revenge on Islam's enemies. Applicant has attempted to share negative threatening messages towards the U.S. or toward non-Muslims when he is discouraged about an event involving Islam.

In addition, during his interview with OPM in March 2019, Applicant revealed that he uses a fictitious birth date on dating websites, despite the fact that he is married. Applicant's wife is unaware of his propensity for visiting dating websites. Most concerning overall is the fact that Applicant does not realize the seriousness of his actions. He has downplayed his behavior. His inappropriate conduct is very concerning, and shows poor judgment.

There are conditions mitigating security concerns under AG ¶ 17. However, none of them are applicable here:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with person involved in criminal activities was unwitting, has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's personal conduct demonstrates poor judgment. The serious nature of the language raises concerns about Applicant's judgment, reliability and trustworthiness. Applicant engaged in this conduct in the United States and in foreign countries without concern or regard for the fact that he possessed a DoD security clearance. Any doubt about a person's eligibility for access to classified information will be resolved in favor of national security. The before-mentioned disqualifying conditions have been established and are not mitigated.

### **Guideline B - Foreign Influence**

The security concern relating to the guideline for Foreign Influence 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

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

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant's mother-in-law is deceased and does not pose a security risk. However, his sister, brother, and brother-in-law are currently residents of Saudi Arabia. It is presumed that Applicant maintains contact with them on some level, since he is aware that his sister now has children and grandchildren. (Applicant's Response to the FORM.) Given the unpredictable nature and conditions that exist and continue in Saudi Arabia, involving the terrorist activities and other human rights violations that are prevalent, a heightened risk of exploitation, coercion, and/or duress exists. Applicant's ties to his family there may pose a heightened security risk for the United States Government. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under 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;

(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; and

(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



Applicant's foreign family ties in Saudi Arabia raises a prima facie security concern that requires the applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. Thus, Applicant bears the burden to establish that his relatives are not vulnerable to influence, coercion, exploitation, or duress. In this case, Applicant has not met his burden. From the evidence presented, Applicant maintains a close and continuing relationship with his sister, a brother, and his brother-in-law. These foreign ties could potentially place the Applicant in a compromising position and pose a risk to the United States.

Given his conduct in the past, it is not clear nor can it be presumed that Applicant will continue to place the interest of the U.S. paramount, and always protect the U.S. from any risk of terrorism, and/or any situation that could place the interests of the U.S. in jeopardy. Under the circumstances, Applicant has not met his burden and has not established the mitigating conditions set forth above under Guideline B. Accordingly, this guideline is found against the Applicant.

### **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 relevant 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), 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and B in my whole-person analysis.

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Personal Conduct and Foreign Influence security concerns.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.c.	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.	Against Applicant
Subparagraph 2.c.	For Applicant
Subparagraph 2.d.	Against Applicant

## Conclusion

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

Darlene Lokey Anderson  
Administrative Judge