



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



In the matter of:)
)
-----) ISCR Case No. 21-00744
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: Lee Schachter, Esq.

08/08/2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated foreign influence and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On August 18, 2021 (posted on August 6, 2021), the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the foreign influence and personal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); 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.

Applicant responded to the SOR on August 17, 2021, and requested a hearing. The case was assigned to me on January 31, 2022, as a case requiring an expedited hearing due to the Applicant's claimed need for a clearance as a condition for employment without any mention of his sponsorship status. (HE 2). A hearing was scheduled for the afternoon of March 1, 2022. With sponsorship confirmed by Applicant in the morning of the date scheduled for hearing, a hearing was convened. Because jurisdiction was satisfied by Applicant's documentation of his employer sponsorship prior to convening the hearing, any need to look to Section 4.4 of the DoD Directive for jurisdictional guidance was negated. (HE 1)

At the hearing, the Government's case consisted of seven exhibits (GEs 1-7) and requests for administrative notice of the countries of Syria and Lebanon. Department Counsel's administrative notice request for Syria covered six documents addressing the country of Syria; his request for administrative notice request for Lebanon covered ten documents addressing the country of Lebanon. Administrative notice was taken of Government source documents covered by each request for administrative notice without objection, in accordance with Federal Rules of Evidence 201(a). See ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007); ISCR Case No. 01-26893 at 10 n.2 (App. Bd. Oct. 16, 2020).

At my request, *sua sponte*, administrative notice was also taken, without objection, of a *U.S. Relations with Syria Bilateral Relations Fact Sheet*, U.S. Dept. of State (April 2022) and a *U.S. Relations with Lebanon Bilateral Fact Sheet*, (U.S. Dept. of State (April 2022)). Applicant relied on 13 exhibits and one witness (himself). The transcript (Tr.) was received on March 11, 2022.

Summary of Pleadings

Under Guideline E, Applicant allegedly (a) was fired from his employment with Employer A in May 2018 for misconduct, and is not eligible for rehire; (b) was fired from his employment with Employer B in January 2017 for numerous translation errors and performance issues, and is not eligible for rehire; (c) was fired from his employment with Employer C in 2011 for misconduct, and is not eligible for rehire; and (d) was terminated from his employment with Employer D in March 2009, and is not eligible for rehire.

Under Guideline B, Applicant allegedly (a) has a brother and four sisters who are citizens and residents of Syria; and (b) has a brother who is a citizen and resident of Lebanon. Allegedly, the brother referenced as a citizen of Syria and Lebanon is the same brother.

In his response to the SOR, Applicant denied each of the Government's personal conduct allegations. He claimed he was responsible for remotely translating information for individuals who were in need of medical information or who had insurance benefit-related questions. He claimed he never received any advance warnings or reprimands from any of the employers who terminated his services and never made any translation errors. He denied any misconduct associated with any of his termination notices and

claimed that the linguist employer covered by SOR ¶ 1.d rehired him after previously listing him “not eligible for rehire,” and re-sponsored him for a security clearance, after which Applicant voluntarily resigned his employment with this employer in 2018 for personal reasons.

Addressing the Government’s foreign influence concerns, Applicant admitted each of the allegations covered by Guideline B with explanations. He claimed he has no conflicts (actual or potential) as the result of his brother and sisters being residents of Syria, or as the result of his having a brother who is a citizen and resident of both Syria and Lebanon. He claimed that he is estranged from his siblings and has had no contact with them in many years, following the passing of his father.

Findings of Fact

Applicant is a 73-year-old civilian sponsored by a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in March 1971 and divorced in December 1974. (GE 1; Tr. 138) He has one child from this marriage, a son (age 58), who is a U.S. citizen by birth with no known current whereabouts. (GEs 1-2; Tr. 139) Applicant’s first wife was a U.S. citizen, with family members who were all citizens of the United States and fluent in the English language exclusively. (Tr. 48) By contrast, none of these family members spoke Arabic.

Applicant remarried in December 1998 and divorced in February 2000. (GEs 1-2; Tr. Tr. 138-139) Applicant maintains no contact with this ex-spouse. She resides in Syria and never immigrated to the United States. (GE 1; Tr. 138-139)

Applicant earned a high school diploma from a private high school in Lebanon, where he became fluent in a Lebanese Arabic dialect that differed somewhat from the Syrian dialect he mastered in Syria. (GEs 1-2; Tr. 39-40) During his time in high school, he also mastered his fluency in English. (Tr. 40) Applicant owns no property in Syria or Lebanon, and has no financial interests (inclusive of inheritance rights, vested or expected) in either country. (Tr. 76-77) By contrast, he has a 401(k) retirement account in the United States.

Following his high school graduation in Lebanon, Applicant immigrated to the United States in June 1970 with a U.S. issued student visa. (GEs 1-7; Tr. 40-41) He has always appreciated the freedoms of choice and tangible benefits that Americans enjoy and receive, and he arrived in the United States with a U.S. student visa with his goal of pursuing advanced educational opportunities. (GE 1; Tr. 41-4, 74-76) Between 1971 and April 2015, Applicant attended several U.S. colleges and universities (mostly online), where he took language and grammar classes to enhance his knowledge of the English language. (GE 1) Applicant applied for and became a naturalized U.S. citizen in May 1980 with the help of his first wife. (GEs 1 and 6; Tr. 49-51) He reported no Syrian

or U.S. military service, and has no intention or desire to deal with anyone from Syria or Lebanon. (Tr. 77) However, he is registered with the U.S. Selective Service, and he has exercised his right to vote in U.S. elections. (AE L; Tr. 51-52)

Applicant's employment history

Before immigrating to the United States, Applicant worked numerous temporary jobs as a translator. (GEs 1-2) These jobs all called for fluency in both English and Arabic. (Tr. 151-159) Over the course of the ensuing 20 years, Applicant worked for private translation firms, never spending more than a year in any one job assignment. (GEs 1-7; Tr. 151-159) Applicant's linguist assignments included close working relationships with U.S. mission coordinators throughout the Operation Freedom campaign (2005-2009) in Iraq. (GE 1 and AEs C-D) In none of these linguist assignments that involved translating Arabic to English did he encounter any disciplinary problems, cited instances of misbehavior, or criticism over his ability to translate Arabic to English. (Tr. 54-72). Consistently, he was credited with following the linguist rules and guidelines he was tasked to apply. (Tr. 62-74)

Between November 2008 and March 2009, Applicant worked for Company D (SOR ¶ 1.d) as an Arab linguist. (GEs 1-7; Tr. 84-85) The job required his acceptance of assignments at dangerous work sites in Iraq, which Applicant declined to accept after receiving inadequate explanations of the job assignments from his employer. (GEs 1-7; Tr. 92-93 and 159-164) After refusing to accept the site assignments, he was fired in March 2009 for reasons his employer would not provide, and was told he was not eligible for rehire. (GEs 1-7; Tr. 92-93,164) Reasons cited by Company D for Applicant's March 2009 termination were (a) his refusal to report to an Iraqi air base (for which he was reprimanded) and (b) his subsequent declination to accept his assignment to a local Iraqi gas station pending further instructions from his employer. (GEs 1-7; Tr. 92-93)

In September 2017, Applicant was furnished an exploratory offer letter covering potential employment as an Arab linguist by Company D. (AE B) The exploratory offer included contingencies: language testing, medical and psychological evaluations, polygraph screening, and receipt of a security clearance. (AE B) Company D furnished a follow-up contingency offer to Applicant in February 2018 that included papers for Applicant to complete. (GE 1 and AE B; Tr. 94-95) Whether Applicant ever completed the employment papers furnished him by Company D is unclear.

In the electronic questionnaires for investigation processing (e-QIP) Applicant completed in January 2018, he listed Company D as his employer of record since June 2017. (GE 1) Whether the result of a simple timing mistake or misunderstanding, this start date cannot be reconciled with the September 2017 contingency offer from Company D. *Compare* GE 1 with AE B. While entries in DOHA's case tracking system carry a June 2017 Company D sponsorship date for Applicant, they provide no information as to whether or when he was re-employed by Company D, or when the company ceased sponsoring him. (H1) All that is known is that Company D notified

DOHA's tracking system in March 2021 that the company was no longer sponsoring Applicant for a security clearance. (H1)

Applicant's employment records document his employment with Company C between April 2011 and July 2011. (GE 7; Tr. 95-104) After completing training with this employer, he was told that he was not a good fit and was terminated without any documented eligibility for rehire. (GE 7) While he was never told of specific reasons for his termination, misconduct was never cited by the employer as a reason for his termination. (GE 7; Tr., 95-104)

For a brief period spanning December 2016 and January 2017, Applicant was employed as an Arab linguist for Company B. (GEs 1-7 and AEs A and J; Tr. 106-107, 179-183). In January 2017, Applicant was told that a customer complained that a word he translated from Arabic to English, "Muatajaz," did not represent the translated word "detained" in English that Applicant furnished, and the word as translated by Applicant represented such a serious interpretation error that it that it could have placed lives at risk. (GEs 3-7 and AE A; Tr. 108) Applicant assured that the term does not have a direct English synonym and most closely resembles the English word detained (or against a person's will). (Tr. 108-110) no reason for firing him for a poor translation. (Tr. 108-114) Applicant continues to believe his translation of the word "Muatajaz" was the correct one. (Tr. 108-114) Even if he was mistaken, a translation mistake was no justifiable reason for firing him.

No one from Company B ever explained to him what the correct translation word was supposed to be, or how his translation (even if mistaken) could put lives at risk. (Tr. 110-112) Before receiving his termination letter with no provision for eligibility for rehire in March 2017, he was never furnished an explanation from his Company B supervisors. (GE 3 and AE A; Tr. 112-115)

In a subsequent letter to Applicant in September 2017, a Company B recruiter approached Applicant about bringing Applicant back to the company as an Arab linguist. (AE E) Surprised that Company B would consider Applicant for future employment opportunities after terminating him and causing his loss of his security clearance and other employment opportunities, he paused initially before responding to Company B's letter. (GE 3 and AE G) After giving Company B's letter some thought, Applicant came around to expressing his interest in reuniting with Company B, if such were feasible. (AE E) Emails ensued between Applicant and Company B throughout September and October 2017. (AE E) Ultimately, the company could not find a current fit for Applicant with its current contracts and placed his application on hold for possible future employment. (AE E; Tr. 122-23)

In a subsequent letter to Applicant in April 2018, Company B reached out to Applicant for a second time to gauge his interest in accepting an Arab linguist assignment with the company. (AE F) The company enclosed an application for Applicant to complete and reserved any formal job offer pending a background investigation. (AE F; Tr. 122-123) Media reports confirmed that Company B was later

sued by the U.S. Government for cheating before completing a large settlement with the Government. (AEs H-I) Rehire offers from Company B never materialized.

In May 2018, Applicant was hired by Company A as an Arab linguist. (GEs 1-7) The job lasted less than a month before he was summarily terminated for cited misconduct (interpreted to mean rudeness to a customer in a hospital room who needed a translation). (GEs 1-7)

Based on Applicant's understanding of the May 2018 incident, he simply could not understand the customer in his telephone conversation with her and terminated the call without being rude to her. (GE 2; Tr. 132-35) The company's stated reason for firing Applicant was his reported failure to understand the customer's request who had communicated with Applicant from her hospital room. (GE 2; Tr. 132-135)

From past emails furnished by Applicant's attorneys, his current sponsoring employer (Company E) has not to date added him to its employee payroll. See H1 and H2 emails from Applicant's counsel. Whether and how Applicant was engaged in employment activities between August 2019 and March 1, 2022, and beyond is unknown.

Applicant's family members

Applicant has a number of family members who are citizens and residents of Syria and Lebanon, respectively. (GEs 1-7; Tr. 80-82) While both of his parents are deceased (1987 for his mother and 1988 for his father) (Tr. 77-78), he has four younger sisters and a younger brother who are citizens of Syria. (GEs 1-7; Tr. 78-82, 147-148)

Applicant's brother is a citizen and resident of Lebanon as well, and is known by Applicant to have spent time in both countries. (GEs 1-2; Tr. 80-81) This brother once served in the Syrian Army as a conscripted enlistee. (GE 2)

Applicant has not maintained any contact with his four sisters residing in Syria in over 20 years and has no close relationships with any of the sisters that could bind him by affection or obligation. (GEs 1-2; Tr. 81-84, 148-150) While he feels no animosity or ill will towards any of his sisters, they engage in too much backbiting and gossip to motivate him to engage them in any way. (Tr. 82; 148-150) Any presumption of affection or obligation towards these sisters is convincingly rebutted.

Applicant maintains no familial relationship with his brother who he considers to be not a nice person. (GE 2) Both the brother and Applicant's son work in Lebanon, and Applicant considers himself estranged from both his son and brother. (Tr. 144-148) He has not spoken to his brother since 2012 (Tr.79-81, 139-140), and maintains no familial relationship with either his son or brother whatsoever that could motivate him to want to reconnect with his brother for any reason, to include ever coming to his brother's aid should the brother ask him for help or assistance. (Tr. 79-83). Any presumption of affection or obligation for this brother is convincingly rebutted.

Syria's country status

The Syrian Arab Republic is ruled by an authoritarian regime dominated by the Socialist Ba'ath Party that is currently engaged in an armed conflict with the armed Syrian opposition. See Request for Administrative Notice-Syrian Republic. Cited sources estimate that the conflict has resulted in over 500,000 deaths with hundreds of thousands more wounded or unjustly detained. Over 5.1 million registered Syrian refugees, and approximately 6.3 million peoples are displaced inside Syria, while 4.53 million remain in hard-to-reach and besieged areas. See *Syria Travel Information*, U.S. Dept. of State (August 2021)

President Bashar Assad has ruled the Syrian Arab Republic since 2000. Syria's constitution mandates that Ba'ath Party leaders be recognized in state institutions and society for their leadership primacy in all three branches of Syrian government, in what is considered to be an authoritarian regime. See Request for Administrative Notice-Syrian Arab Republic, *supra*; *Syria 2020 Human Rights Report*, U.S. Dept. of State (March 2021).

Terrorist activity in Syria

Terrorism continues to be a major problem for Syria. Paramilitary groups continue to operate in Syria. Designated a state sponsor of terrorism in 1979, Syria has continued to provide weapons and political support to Hizballah, and has continued to allow Iran to arm and finance this terrorist organization. The Assad regime's relationship with Hizballah and Iran has grown much stronger in recent years as the Assad regime has continued to rely heavily on external actors like Hizballah and Iran to engage its adversaries.

Iran's Islamic Revolutionary Guard Corps (IRGC) maintains an active presence in Syria with President Assad's permission, and Assad remains a staunch defender of Iran's aggressive foreign policies. See Request for Administrative Notice, Syrian Arab Republic, *supra*, at 3; *Country Reports on Terrorism 2020 (Syria)*, U.S. Dept. of State (Dec. 2021). State Department reports confirm that between 2019 and 2020, brutal attacks on civilian populations by militant terrorist groups (like al-Qa'da) operating in Syria have continued virtually unabated. See *Country Reports on Terrorism 2020 (Syria)*, *supra*.

Crime, human rights, and export violation concerns

Crime, human rights, and export violation issues continue to dominate security-related issues in Syria. Ongoing risks of kidnappings and detentions of U.S. citizens and Westerners continue to plague the country. See *Syria Travel Advisory*, U.S. Dept. of State (August 2021) throughout the country. U.S. citizens remain targets of abduction and/or unjust detention by the Syrian government. See *id.* Uncontrolled militia activity by paramilitary groups operating in Syria and corruption remain formidable obstacles to free enterprise and capital formation in general.

Significant human rights issues in Syria include unlawful or arbitrary killings (including extrajudicial killings); forced disappearances; torture; arbitrary detention; harsh and life-threatening prison and detention center conditions; arbitrary or unlawful interference with privacy; the worst forms of restrictions on free expression, the press, and the internet (including violence against journalists); censorship, site blocking, and criminal libel; significant interference with the rights of peaceful assembly; and legal restrictions on freedom of movement of women; threats of violence against internally displaced persons (IDPs) and returnee populations perceived to have been affiliated with the Islam State of Iraq and Syria. See *Syria Human Rights Report, supra*, at 2.

Additional human rights abuses in Lebanon include widespread corruption, lack of accountability for violence against women; coerced abortion; unlawful recruitment and use of child soldiers by the Assad regime and other armed actors, trafficking in persons, violence and severe discrimination targeting lesbian, gay, bisexual, transgender, and intersex persons, existence and use of laws criminalizing consensual same-sex sexual conduct between adults; and severe restrictions on workers' rights. See *Syria Human Rights Report, supra*, at 2.

Government investigations of alleged abuses and atrocities perpetrated by Syrian security forces rarely produce punishment of those found to be responsible. Most abuses and atrocities are never reported or pursued by Syrian government and military officials with access to abuse data. U.S. designations of individuals for U.S. sanctions or prosecutions of individuals for export violations in connection with Syria are covered in the Request for Administrative Notice-Republic of Syria, *supra*. Cited cases include indictments of a number of Syrian nationals engaged in smuggling barrels of oil, jet fuel, and goods out of the United States. See *id.*

U.S.-Syrian relations

U.S. relations with Syria were established in 1944 following a U.S. determination that Syria had achieved from a French administered mandate. See *U.S.-Syrian Relations, Fact Sheet*, U.S. Dept. of State (June 2022). Syria severed diplomatic relations with the United States in 1967 amidst the ongoing Arab-Israeli War.

Since 1979, Syria has been on the U.S. list of state sponsors of terrorism because of (a) Syria's support of terrorism and terrorist groups; (b) its former occupation of Lebanon; (c) its pursuit of weapons of mass destruction and missile use of chemical weapons; and (d) its ongoing efforts to undermine U.S. and international stabilization activities in Iraq. See *U.S.-Syrian Relations, Fact Sheet, supra*. Syria remains subject to legislative-mandated penalties, export-sanctions under the Syria Accountability Act and is ineligible to purchase U.S. military equipment. (*id.*)

Lebanon's country status

Lebanon is a parliamentary state based on the 1943 National Pact that apportioned authority among a Maronite Christian president, a Shia speaker of the Chamber of Deputies (parliament), and a Sunni prime minister. The law officially

recognizes 18 religious sects or confessions. See Request for Administrative Notice-Lebanon. Lebanon parliamentary elections between 2016 and 2020 have been generally peaceful and free and fair. See *Lebanon 2020 Human Rights Report*, U.S. Dept. of State (March 2021)

Terrorism and terrorist activities in Lebanon

Terrorist groups operating in Lebanon in 2020 included U.S.-designated foreign terrorist organizations (such as, e.g., Hizballah and ISIS). See *Country Reports on Terrorism 2020 (Lebanon)*, U.S. Dept. of State (Dec. 2021) Being closely allied with Iran, since the early 1990s, Hizballah has shown signs of evolving into a business and political enterprise and become a state within a state in Lebanon with strong influence in Lebanon's Shia community.

Hizballah is known to actively participate in Lebanon's political system and operates various social programs, such as hospitals and schools. Elections in 2018 resulted in Hizballah gaining 13 seats in Lebanon's 128-member parliament. See *the World Fact Book, References-Terrorist Organizations at Hizballah*, Central Intelligence Agency (Jan. 2022)

Hizballah maintains the capability to target, both directly and indirectly, U.S. financial and political interests in Lebanon, and beyond in the region, overseas, and to a lesser extent in the United States. See Request for Administrative Notice-Lebanon, *supra*; *Annual threat of the U.S. Intelligence Community*, Office of the Director of National Intelligence (April 2021). Case examples are covered in the Request for Administrative Notice-Lebanon, *supra*.

Export violations and prosecutions

U.S. prosecutions of individuals for espionage, terrorism, and export violations in connection with Hizballah or Lebanon have increased in recent years. Cited prosecutions and convictions for offenses related to individuals supporting Hizballah in various are numerous. See Request for Administrative Notice-Lebanon, *supra*. Examples include prosecutions of individuals who have absconded with U.S. classified information designed to aid a foreign government (Lebanon and Hizballah), as well as individuals who have engaged in various fraud-related schemes violating the Arms export Control Act. See *id*.

Human rights issues in Lebanon

Human rights issues remain serious problems in Lebanon for both Lebanese citizenry and visitors from the United States and other Western countries. See Request for Administrative Notice-Lebanon, *supra*. Cited abuses include torture by security forces, arbitrary arrest or detention, serious political interference with the judiciary; serious restrictions on free expression, the press, and the internet, including violence or unjustified arrests or prosecutions against journalists, censorship, and the existence of laws criminalizing libel, high-level and widespread official corruption, and criminalization

of lesbian, gay, bisexual, transgender, and intersex status or conduct. See *Lebanon 2020 Human Rights Report, supra*.

U.S.-Lebanon relations

To be sure, Lebanon's history has been marked by political turmoil and prosperity as a regional center of finance since the country's achievement of independence in 1943. See *U.S. Relations with Lebanon, Bilateral Relations Fact Sheet*, U.S. Dept. of State (Aug. 2022). The country's 1975-1980 civil war was followed by years of social and political unrest and instability. Neighboring Syrian military forces long influenced Lebanon's foreign and domestic policies. (*id.*)

Still, the United States has tried to help Lebanon preserve its social political sovereignty, and promote and support Lebanon's national unity and territorial integrity. See *U.S. Relations with Lebanon, Bilateral Relations Fact Sheet, supra*. Since 2006 alone, the United States has poured more than \$5.5 billion in foreign assistance into the country. Assistance funding has supported programs that improve workforce employability and productivity, good governance, and social cohesion. (*id.*) The United States is Lebanon's primary security partner and has provided more than \$2.5 billion in bilateral security assistance to the Lebanese armed forces (LAF) since 2006. In all, the United States has furnished more than \$2.9 billion in humanitarian assistance to Lebanon since the outbreak of the Syrian crisis. See *id.*

Although Lebanon has historically enjoyed a free-market economy with a strong *laissez-faire* commercial tradition, since the fall of 2019, it has been beset with ongoing financial crises, which it has yet to recover from. See *U.S. Relations with Lebanon, Bilateral Relations Fact Sheet, supra*.

Necessary economic reforms to reduce debt and stabilize Lebanon's fiscal conditions have yet to be implemented. While the United States and Lebanon do not have a bilateral market treaty, or an agreement on the avoidance of double taxation in place, the United States has recently signed a trade and Investment Framework Agreement with Lebanon to provide a more attractive market climate, expand trade relations, and remove obstacles to trade and investment between the two countries. See *id.*

Endorsements

Applicant received a favorable endorsement from a U.S. government customer who worked with Applicant for several years in their joint support of a Joint U.S. Task Force Mission. (AE D) Aware of the SOR allegations made against Applicant, he opined that he did not think they were reflective of Applicant's character, patriotism, or willingness and ability to protect classified information. This former U.S. Government customer credited Applicant with being an outstanding professional who is intelligent, alert, sensitive, careful, and a genuine thinker who is devoted to "logic traits that he demonstrated during his tenure of service with me." (AE D) This former U.S. Government customer recommended Applicant for a security clearance.

In recognition of his linguistic contributions to the U.S. military campaign of Operation Freedom in Iraq (2005-2009), Applicant earned numerous certificates of appreciation and recognition. (AE C) His certificates of appreciation credit him with providing important support and expertise to the intelligence battalions he was embedded with. (AE C)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

The Concern: 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 protected classified or sensitive information or is associated with a risk of terrorism. See AG ¶ 6.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, and 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 . . . AG ¶ 15.

Burdens of Proof

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. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 [or her] 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

Security concerns are raised over Applicant’s having family members who are citizens and residents of Syria and Lebanon, respectively. Additional security concerns are raised over a series of terminations (four in all) attributable to cited instances of reported misconduct and a lack of demonstrated professionalism.

Foreign influence concerns

The status of Applicant’s four sisters and brother as citizens and residents of Syria and Lebanon raise serious national security questions about Applicant’s being placed in a position in which he could be manipulated, pressured, or coerced by Iraqi military and terrorist organizations operating in Ira. These concerns present heightened security risks covered by two disqualifying conditions. (DC) ¶ 7(a) of the AGs for foreign influence: “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 DC ¶ 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,” apply to Applicant’s situation.

Generally, the AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relationships and contacts with

persons who are citizens and residents of foreign countries in general. What is considered to be an acceptable risk in one country may not be in another. The geopolitical aims and policies of the particular country (in this case Syria and Lebanon) do matter. See ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007)

Summarized, the AGs do take into account the country's demonstrated relations with the United States as an important consideration in gauging whether the particular relative, friend, or contact with citizenship and residency elsewhere, create a heightened security risk. Syria and Lebanon are countries occupied by terrorist organizations and is considered a country with a poor human rights record and ones that are unsafe for travel by U.S. citizens despite the countries' having generally positive bilateral relations with the United States.

Appeal Board precedents hold that there is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her own immediate family members as well as to those of his or her spouse. ISCR Case No. 17-04208 at 4 (App. Bd. Aug. 7, 2019); ISCR Case no. 12-00084 at 2 (App. Bd. May 22, 2014); ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15 2011). Infrequency of contact with the family member (as is the case with Applicant's siblings) 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 family. See ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019).

In Applicant's case, he has convincingly rebutted any presumption of affection or obligation that could or might exist between himself and his siblings residing in Syria and Lebanon, respectively. Whatever bonds of affection or obligation previously existed, or may have existed during Applicant's childhood and adolescent years have long since been extinguished. Since the early 2000s, Applicant has had no contact with or interest in any of these siblings. Based on the information supplied in this evidentiary record, Applicant has persuasively demonstrated that he has no personal relationships with any of his siblings in Syria in Lebanon that could place Applicant or any of his siblings at risk to coercion, pressure, or influence from Syrian or Lebanese military or government officials.

Mitigating conditions (MCs) available to Applicant are as follows: MC ¶¶ 8(a), "the nature of the relationships with foreign 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"; 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 th government"; and 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." See ISCR Case No. 06-24575, *supra*.

So, although, infrequency of contact with family members residing in high risk countries may not be enough by itself to rebut the presumption an Applicant has ties of affection for, or obligation to, his immediate family members residing in a heightened risk country, the proven absence of any ties of affection, or obligation to, any of his siblings in Syria and Lebanon (as here) is enough to rebut any presumption of affection, or obligation to the siblings. See ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019).

Personal conduct concerns

Security concerns are raised as well over Applicant's severed employment relationships over a 10-year span. (SOR ¶¶ 1.a-1.d) Each of the cited employment relationships resulted in involuntary terminations following brief periods of employment. Cited reasons for the terminations were misconduct, translation errors, and declinations to accept assignments at identified dangerous sites in Iraq. In each instance, Applicant was determined to be ineligible for rehire.

For sure, the Government has the right to require those who have access to classified information to adhere to core tenets of trust, reliability, and good judgment. See *Snepp v. United States*, 444 U.S. 507, 511n.6 (1980) Serious infractions by an applicant with access to classified information raise security concerns over an applicant's willingness to comply with rules and regulations. See ISCR Case No. 14-03701, at 3-4 (App. Bd. April 12, 2017). In cases of cited serious misconduct even favorable opinions of supervisors (past and present) and coworkers may not be enough to surmount findings of serious Applicant misconduct. See *id.*

Nothing in this case, however, reveals any acts of dishonesty, misconduct, or meretricious behavior on the part of Applicant. None of the cited instances of misconduct and a lack of professionalism reflect any breaches of trust and reliability, or even displays of poor judgment. Each of the terminations of employment relationships Applicant incurred with his SOR-covered employers involved either refusals to accept perceived dangerous assignments, disputes over translations, communication misunderstandings, and in some instances poor fits. Allegations of misconduct and the lack of professionalism are unsubstantiated.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his siblings who are citizens and residents of Syria and Lebanon, respectively, are free from heightened risks of coercion, pressure, and influence from exploitation by military and terrorist organizations operating in Syria and Lebanon, consistent with safeguarding U.S. security interests. Additional security concerns are associated with Applicant's cited instances of misconduct and lack of professionalism.

Taking into account Applicant's past contributions to the U.S. defense mission as a linguist in Iraq (2005-2009) supporting Iraq coalition forces, and the absence of any

close family relationships in either Syria or Lebanon, any heightened risks associated with these family members are minimal at best. Applicant's cited acts of misconduct are unsubstantiated and do not reflect any lapses in candor, misconduct, or professionalism.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence and personal conduct security concerns are mitigated (foreign influence) and unsubstantiated (personal conduct). Eligibility for access to classified information is granted.

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:

Guideline E (PERSONAL CONDUCT):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Guideline B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparagraphs 2.a- 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted

Roger C Wesley
Administrative Judge