



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



In the matter of:)	
)	
)	ISCR Case No. 20-00881
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

11/18/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from his foreign contacts and foreign interests. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 30, 2018. On August 31, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. He responded to the SOR on October 13, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On February 11, 2022, Department Counsel submitted the Government's file of relevant material (FORM) including Items 1-6. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on April 19, 2022. A response was due on May 19, 2022, but none was received. The case was assigned to me on, July 21, 2022. Items 1-3 are the SOR and Applicant's Answer, which are the pleadings in the case. Items 4-6 are admitted without objection.

Request for Administrative Notice

At Department Counsel's request, I took administrative notice of facts concerning Jordan, Lebanon, Turkey, and Kuwait. Department Counsel provided supporting documents that verify and provide context for those facts. They are detailed in the Government's administrative notice filings (AN) 1-4 and are included in the findings of fact.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations (§§ 1.a-1.e). His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 61 years old. He is a citizen of Jordan, but was born in Kuwait and grew up there. He came to the United States in 1979 on a student visa. He married a U.S. citizen in 1982, and they divorced in 1984. He became a U.S. citizen in August 1989. The following month, he moved back to Kuwait for a year. After the Iraqi invasion of Kuwait in 1990, he returned to the United States but traveled to Jordan to marry his current wife in 1991. She is now a dual U.S. and Jordanian citizen. They have three adult children who are dual U.S. and Jordanian citizens. He earned a bachelor's degree in 1997, a master's degree in 2000, and in 2015 a doctoral degree through an online institution. In 2002, he and his family moved back to Kuwait, and lived there until 2017. (Item 4, 5, 6)

While living in Kuwait from 2002 – 2017, Applicant worked for several different foreign companies. In this employment, he provided advice and support to several Kuwaiti ministries and to a Kuwaiti scientific research institute. He is currently employed by a U.S. government contractor as an Arabic interpreter and linguist. (Item 4, 5, 6)

In a background interview, Applicant stated that he does not have allegiance to any country over the United States and that he would not betray this country. (Item 5, 6)
The SOR alleges:

SOR § 1.a: One of Applicant's sisters is a Jordanian citizen residing in Kuwait. He admits the allegation. He reported having weekly contact with her by phone. (GE 5, 6)

SOR § 1.b: One of Applicant's sisters is a citizen and resident of Jordan. He admits the allegation. He reported having weekly contact with her by phone. (GE 5, 6)

SOR § 1.c: Applicant maintains contact with a friend who is a Lebanese citizen, and who resides in Kuwait. He admits the allegation. He reported having occasional contact with him by phone and in person. (GE 5, 6)

SOR § 1.d: Applicant maintains contact with a friend who is a dual citizen of Turkey and Lebanon, and who resides in Kuwait. This friend also works for the Turkish Ambassador at the Turkish Embassy in Kuwait. He admits the allegation. He reported

having occasional contact with him by phone and in person. He stated that he has been his friend for many years. (GE 5, 6)

SOR ¶ 1.e: After becoming a U.S. citizen in August 1989, Applicant returned to live in Kuwait from September 1989 – October 1990, and from March 2002 – June 2017. He admits the allegation. He stated that he moved because his father was sick in 1989, and in 2002, he was offered a job. (GE 5, 6)

Jordan

In AN 1, the Government included information from the U.S. Department of State as of January 2022, about the United States' relations with Jordan and the current conditions in that country. I take administrative notice of the following facts:

The U.S. Department of State has assessed Amman as being a high threat location for terrorism directed at or affecting official U.S. government interests. Local, regional, and transnational terrorist groups and individual extremists have demonstrated a willingness and capacity to plan and execute attacks in Jordan.

Jordan continues to face a threat of persistent terrorist activity, both domestically and along its borders. Part of the threat is due to its proximity to the conflicts in Syria and Iraq, as well as its rejection of the Salafi-Jihadi interpretations of Islam.

Violent extremist groups in Syria and Iraq, including ISIS, have conducted or supported attacks in Jordan, and continue to plot against local security forces, U.S. and western interests, and soft public targets.

Jordan has taken a prominent role in the coalition to defeat ISIS. However, regional issues and U.S. involvement in the region can inflame anti-U.S./western sentiment. Recent surveys show that more than 80% of the population holds an unfavorable view of the U.S. government.

There have been significant human rights issues in Jordan. The government has taken some limited steps to investigate, prosecute, and punish officials who committed abuses.

Lebanon

In AN 2, the Government included information from the U.S. Department of State as of January 2022, about the United States' relations with Lebanon and the current conditions in country. I take administrative notice of the following facts:

The U.S. Department of State has urged U.S. citizens to reconsider travel to Lebanon due to crime, terrorism, armed conflict, civil unrest, kidnapping, and our embassy's limited capacity to provide support to U.S. citizens. It advises a "Do Not Travel" warning to the border and refugee areas due to the potential for armed conflict.

The Syrian conflict has affected the county economically and socially. More than a million Syrian refugees have strained the country's weak infrastructure and ability to deliver social services.

Terrorist groups operating in Lebanon include ISIS, and Hizballah, which is closely allied with Iran. Hizballah has a strong influence in the country and actively participates in the political system and runs social programs.

Hizballah has been responsible for terrorist attacks that have killed U.S. citizens and military personnel. Its presence continues to impede effective government action against terrorist incidents.

The U.S. has recently prosecuted several persons connected to Lebanon and Hizballah for espionage, terrorism, and export violations.

There have been significant human rights issues in Lebanon, although the government structure exists to prosecute and punish officials who committed abuses, government officials enjoyed a measure of impunity.

Turkey

In AN 3, the Government included information from the U.S. Department of State as of January 2022, about the United States' relations with Turkey and the current conditions in county. I take administrative notice of the following facts:

Turkey is a NATO ally, a regional partner, and an important security partner. The U.S. has committed to improving its relationship with Turkey.

The U.S. Department of State urges travelers to exercise increased caution due to terrorism and arbitrary detentions. Parts of Turkey have increased risk, including areas near the Syrian border. Terrorist attacks have occurred in Turkey over the last several years.

Terror groups continue plotting possible attacks in Turkey. Terrorists have previously attacked U.S. interests in Turkey, including the U.S. Embassy in Ankara, the U.S. Consulate General in Istanbul, and the U.S. Consulate in Adana.

The U.S. has sanctioned Turkey's defense industry for engaging in transactions with a Russian arms export entity.

Turkey is a member of the coalition to defeat ISIS. It has provided air space and facilities for coalition operations in Iraq and Syria.

There have been significant human rights issues in Turkey. The government has used anti-terror legislation to restrict freedoms and compromise the rule of law. There have been politically motivated reprisals, including violence and threats of violence against persons in opposition to or critical of the government.

Kuwait

In AN 4, the Government included information from the U.S. Department of State as of January 2022, about the United States' relations with Kuwait and the current conditions in country. I take administrative notice of the following facts:

The U.S. and Kuwait have a long history of friendship and cooperation. In 1991, the U.S. led a multinational coalition to liberate Kuwait from Iraqi occupation. In 2003, Kuwait provided a platform for operations in Iraq, and has played a similar role in the fight to defeat ISIS. Kuwait is also a partner in U.S counterterrorism efforts.

In the 2021 Country Reports on Human Rights Practices issued by the U.S. Department of State, it identified human rights concerns in Kuwait. The concerns included credible reports of torture or cruel, inhuman, or degrading treatment or punishment by government agents; arbitrary arrest; serious restrictions on free expression, the internet, and the media; and substantial interference with the freedom of peaceful assembly and freedom of association.

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

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

Analysis

Guideline B, Foreign Influence

AG ¶ 6 details the security concern about “foreign contacts and interests” as follows:

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 indicates 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;

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members and foreign contacts 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, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

A heightened security risk in Jordan, Lebanon, Turkey, and Kuwait is established by the administratively noticed facts in the record. The security risks include the risk of terrorism and the human-rights records of these countries.

Applicant's two sisters and two friends, with whom he maintains close and continuing contact, are citizens or residents of countries with a heightened security risk. One of these friends has ties to an official of high rank in a foreign government. Applicant's longstanding connection to Kuwait presents a conflict of interest. AG ¶¶ 7(a) and 7(b) apply.

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 U.S.;

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant failed provide sufficient evidence to find that it is unlikely that he 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 U.S. AG ¶ 8(a) does not apply.

Although Applicant and his family has lived in the U.S. since 2017, he failed to provide sufficient evidence to find that there is no conflict of interest between his sense of loyalty or obligation to his foreign contacts, his allegiance and connection to Kuwait is minimal, and that he has deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any conflict of interest in the favor of the U.S. interest. AG ¶ 8(b) does not fully apply.

Applicant failed to provide sufficient evidence to find that his contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation. He maintains frequent contact with his sisters, and he continues to have a close bond of affection and obligation for them. AG ¶ 8(c) does not apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. He did not present sufficient evidence of his ties to the United States to overcome the concerns about his interest and

ties to Kuwait. I conclude Applicant did not mitigate the 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 - 1.e:	Against Applicant

Conclusion

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.

Ross D. Hyams
Administrative Judge