



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



In the matter of: )  
)  
) ISCR Case No. 23-00165  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Emily L. Goeke, Esq.

04/18/2024

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the Guideline B, foreign influence security concerns. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On April 4, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implement by the DOD on June 8, 2017 (AG).

Applicant answered the SOR with an undated response, and requested a hearing before an administrative judge. On December 5, 2023, the case was assigned to me.

On December 13, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant's counsel that the hearing was scheduled for January 24, 2024. I convened the hearing as scheduled, using video teleconferencing. Government exhibits (GE) 1 and 2 were admitted in evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I, and its disclosure letter was marked as HE II. Without objection, I took administrative notice about factual information concerning Kuwait as presented in Department Counsel's request and the accompanying background information as reflected in HE III. The facts administratively noticed are set out in the Findings of Fact, below. Applicant testified, called one witness, and offered 12 documents, marked as Applicant exhibit's (AE) 1-12, which were admitted without objection. DOHA received the transcript (Tr.) on February 1, 2024.

### **Findings of Fact**

In Applicant's answers to the SOR, she admitted all the allegations (except for the second sentence in SOR ¶ 1.c, which she denied), with detailed explanations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 26 years old. She was born in the United States (US). She also was a dual Kuwaiti citizen by virtue of her father's Kuwait citizenship. She moved to Kuwait with her family when she was about six-months-old. She lived there until she was two-years-old when she moved back to the US, where she has remained. At one time, she held both Kuwaiti and US passports. As explained in detail *infra*, she destroyed her Kuwaiti passport and believes she is no longer considered a Kuwaiti citizen. (Tr. 21-22, 25, 31-33, 61; GE 1; AE 2-3)

Applicant attended elementary school, middle school, high school, and college in the US. She graduated from college in May 2020. She has worked for the same government contractor as an engineer since July 2020. (Tr. 22-23, 25; GE 1; AE 1)

The SOR alleged under Guideline B that Applicant's father and mother are dual citizens of Kuwait and the US and that her father resides in Kuwait; that she received a scholarship from the Kuwaiti government, valued at approximately \$150,000, to attend college in the US and that because of that scholarship, she feels obligated to Kuwait; and that she had approximately \$9,000 in a Kuwaiti bank account derived from scholarship money provided by the Kuwaiti government. (SOR ¶¶ 1.a-1.d)

### **Foreign Influence**

Applicant's father was born in Kuwait and is a Kuwaiti citizen. He came to the US for college. He received the same type of scholarship his daughter would later receive to fund his college education. While living in the US, he met Applicant's mother. They would marry and have four children, with Applicant being the youngest. They remain married. He became a naturalized US citizen in 1996. Before Applicant was born, her family moved to Kuwait where her father worked in a government position as an

engineer. He worked in that position for approximately 25 years when he retired. He receives a government pension from that employment. Upon his death, Applicant's mother will then receive the pension. (Tr. 33, 41-43, 57, 59; GE 1)

Since Applicant's father's retirement, he splits his time between Kuwait and Dubai, where he manages or owns a retail store. Applicant believes he rents apartments in both locations. She currently sees her father about once a year when he comes to the US. She talks to him as little as once a month to as frequently as once a week. He provides her no financial support. While he was working for the Kuwaiti government and his family resided in the US, Applicant only saw her father several times a year when he came back to the US. (Tr. 29-31, 44)

Applicant's mother is a native-born US citizen. Her father was a chief master sergeant in the US Air Force, and she lived throughout the US and in several foreign countries as a military dependent. She met and later married Applicant's father when he was in the US as a college student. At some point, after their marriage, they moved to Kuwait where her husband secured a job. She lived in Kuwait for about 10 years. She moved back to the US for the birth of all her children so they would be US citizens. About six months after Applicant was born in 1998, they moved as a family back to Kuwait. The family remained there until Applicant was two years old when the family, except for her husband, moved back to the US to the same area where Applicant's mother's family lived. The family has remained there ever since, never changing their residence back to Kuwait. (Tr. 41-42, 57-58, 61; GE 1)

Applicant's mother testified that she obtained dual citizenship with Kuwaiti when she lived there because she wanted to protect her children in the event something happened to her husband. If he were deceased or incapacitated while they lived in Kuwait and she was not a Kuwaiti citizen, she could have faced legal difficulties if she tried to relocate the family back to the US. She also stated that she moved the family back to the US when Applicant was two years old because she wanted her children to be educated in the US. She has resided in the US since that time. She works as a bookkeeper for a local school. She last visited Kuwait in 2018 to see her husband. She explained that the separate residencies of her and her husband worked for the family. He was able to work and provide a good income for the family and she was able to live and educate the children in the US. As a Kuwaiti citizen, she is entitled to her husband's pension upon his death. (Tr. 31, 43, 57-59)

Applicant attended college from 2016 to 2020 when she graduated with a bachelor's degree. She was able to fund her education with a scholarship she was granted by the Kuwaiti Ministry of Higher Education. She qualified for the scholarship because of her relationship to her father, a native born Kuwaiti citizen. Her father and her three siblings all previously qualified for the same scholarship. She estimated the value of the scholarship at approximately \$150,000. It paid for tuition, books and equipment, provided her a monthly stipend, and health insurance while she attended school. The guidelines for being awarded and maintaining the scholarship are set forth in AE 6 (which were in effect when Applicant applied) and AE 7 (which are the current

guidelines). Nothing in either set of guidelines obligates Applicant to any sort of “payback” to the Kuwaiti government for receiving and using the scholarship. While she was in school, she was required to contact the Kuwaiti consulate yearly to ensure she continued to follow the prescribed guidelines. After her graduation, except for one contact with the consulate about the end of her health insurance benefits, she has had no further contact with any representative of the Kuwaiti government about her scholarship. Her siblings have never been contacted by the Kuwaiti government about any further obligation to it because of their scholarships. She believes she has no obligation to the Kuwaiti government resulting from the scholarship. (Tr. 25, 33-36; AE 6-7)

Applicant’s father established a Kuwaiti bank account for Applicant in order to deposit the scholarship funds to which she would have access during her college career. During her background interview in January 2022, she told the investigator the estimated funds remaining in the account was approximately \$9,000. In June 2020, Applicant contacted the Kuwaiti bank and arranged to have the remaining funds which were only \$3,702 wire-transferred to her US bank account. Her US bank statement from June 2020 corroborates her action. Additionally, she provided text correspondence with the Kuwaiti bank that shows her successful efforts to close that bank account on July 4, 2020. She has no other bank accounts or assets of any kind in Kuwait. (Tr. 37-39; AE 6-10)

Applicant explained that 2020 was a very difficult year for her because her father had some health issues, and she was worried about him and being able to see him in Kuwait if his medical condition worsened. She had that frame of mind when she underwent her background interview in January 2020. This led her to state that she would retain her Kuwaiti passport for ease of travel to Kuwait. She also stated she would not renounce her Kuwaiti citizenship because she wanted to maintain it while her father was alive. She further stated she felt a moral obligation to maintain her Kuwaiti citizenship because of the scholarship she received. At the same time, she told the investigator that she is a loyal US born-citizen who planned to remain in the US permanently. She prefers the US to Kuwait in every way and is completely loyal to the US. (Tr. 40; GE 2; SOR answer)

Since the time of that background interview, Applicant has taken actions to show that she has no obligation of loyalty to Kuwait. She researched her dual citizen status and discovered that because she kept her US citizenship past the age of 18 years old, she is no longer considered a Kuwaiti citizen. She provided documentation showing that she destroyed her Kuwaiti passport on September 19, 2023. The documentation included a declaration from her facility security officer attesting to the passport destruction, which he witnessed. She testified that her last visit to Kuwait was in 2018 to see her father. Her gross annual salary is over \$100,000. She recently bought a home in the US with a value of approximately \$400,000. Her savings account has approximately \$50,000 and she has a retirement account of some unknown value. Hypothetically, if she were asked by the Kuwaiti government to repay her scholarship money, she would sell her house and use those proceeds to make the payment. I found

Applicant's explanation for the difference between her background interview statements about her loyalty to Kuwait and her more recent statements refuting those earlier statements credible and supported by her actions. (Tr. 33, 39, 45-48, 50; GE 2; AE 2-3; SOR answer)

### **Character Evidence**

Applicant presented a supporting letter from a friend who has known her since 2014. She is aware of the allegations stated in the SOR. She described Applicant as an honest, transparent and patriotic person. She recommended granting Applicant's security clearance. (AE 11)

### **Administrative Notice-Kuwait**

The United States has a long history of friendship and cooperation, rooted in shared values, democratic traditions, and institutional relationship with Kuwait. Kuwait is an important partner in US counterterrorism efforts, including efforts to block financing of terrorist groups. No negative information about Kuwait is contained in the background information supporting the administrative notice request. (HE III; AE 12)

### **Policies**

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 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, these guidelines are applied 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(a), the entire process is a careful weighing 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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.

Section 7 of EO 10865 provides that 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 explains 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.

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

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly

nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See generally ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶¶ 7(a) and 7(f) require evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). See also ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019) ("Heightened risk" is not a high standard.). Applicant's father's ties to Kuwait are sufficient to establish a "heightened risk."

The allegations in SOR ¶ 1.a is established because of Applicant's father's current and past ties to Kuwait. Applicant's mother is a long-standing resident and native-born citizen of the United States. She has not visited Kuwait since 2018 and retains her Kuwaiti citizenship only to benefit from her husband's pension upon his death. AG ¶¶ 7(a) and 7(b) do not apply to SOR ¶ 1.b.

The allegation in SOR ¶ 1.c is established. Applicant was the recipient of a college scholarship from the Kuwaiti government valued at approximately \$150,000. She previously expressed feeling an obligation toward Kuwait for providing the scholarship. AG ¶¶ 7(a), 7(b), and 7(f) all substantially apply. The allegation in SOR ¶ 1.d is not established. Applicant documented that she closed the Kuwaiti bank account where she had received her scholarship funds and has no other foreign assets.

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.

Given the nature of the relationship between Kuwait and the United States and the limited contact that Applicant has with her father who lives part-time in Kuwait, it is unlikely that Applicant would be placed in a position of having to choose between the interests of her father and those of the United States. AG ¶ 8(a) applies.

Applicant has met her burden to establish her “deep and longstanding relationships and loyalties in the U.S.” She was born a U.S. citizen and has lived and gone to school only in the United States. She has a good job here, owns a home, and has substantial assets. Her connection to Kuwait is only through her father. A friend attests to her loyalty and trustworthiness. Even though Applicant greatly benefited from her Kuwaiti-funded scholarship, there is no evidence to support that she is anyway obligated to their government because of that scholarship. She credibly explained why she told the investigator that she felt obligated to Kuwait, but that she no longer feels that way. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

### **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), 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. The factors tending to support granting Applicant's clearance are more significant than the factors weighing towards denying her clearance. I considered her minimal connection to Kuwait against the strong ties she has to this country, thereby demonstrating her longstanding loyalty to the United States and that there are no foreign influence concerns. Therefore, she provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the security concerns arising under Guideline B, foreign influence, were either not established or were mitigated.

### **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:	FOR APPLICANT
Subparagraphs 1.a: - 1.d:	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.

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Robert E. Coacher  
Administrative Judge