



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



In the matter of:)
)
) ISCR Case No. 23-01788
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

09/25/2024

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant successfully mitigated the security concerns regarding foreign influence but failed to mitigate the security concerns regarding drug involvement and substance misuse. Eligibility for a security clearance is denied.

Statement of the Case

On February 10, 2017, and again on December 22, 2022, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories and asked him to verify the accuracy of reports of several previous interviews that were conducted by the U.S. Office of Personnel Management (OPM). He responded to those interrogatories on November 20, 2023. On December 19, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD

4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline H (drug involvement and substance misuse) and Guideline B (foreign influence), and detailed reasons why the DCSA CAS adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a statement, dated January 9, 2024, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM), including proposed Government Exhibits (GE) was mailed to him on February 22, 2024, and he was afforded an opportunity, within a period of 30 days, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, he was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on March 19, 2024. His response was originally due on April 18, 2024, but was apparently extended to April 23, 2024. Applicant timely responded to the FORM, and Department Counsel did not object to the submission. The case was assigned to me June 21, 2024.

Rulings on Procedure

Department Counsel requested that I take Administrative Notice of certain enumerated facts pertaining to the Syrian Arab Republic (Syria), appearing in extracts of nine written submissions issued by various U.S. Government sources. Facts are proper for Administrative Notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Syria in publications of the U.S. Department of State, the U.S. Department of the Treasury, the U.S. Department of Justice, and the U.S. Office of the Director of National Intelligence.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g., *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents).

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201,

Federal Rules of Evidence, I take administrative notice of certain facts, as set forth below under the Foreign Influence Section, found in the Syrian subsection. However, while I do not reject the facts set forth in the press releases issued by the U.S. Department of Justice and the U.S. Department of the Treasury, any inference that Applicant or his family participated in the criminal activity was not argued by the Government and is specifically rejected.

Findings of Fact

In the absence of any objections to the documents submitted by either party, those documents are admitted as Government exhibits or Applicant exhibits. In his Answer to the SOR, Applicant admitted both factual allegations pertaining to drug involvement and substance misuse (SOR ¶¶ 1.a. and 1.b.), as well as the sole factual allegation pertaining to foreign influence (SOR ¶ 2.a.). The information in his Answer to the SOR is incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact.

Background

Applicant is a 30-year-old Syrian-born naturalized U.S. citizen both Syria and the U.S. He came to the United States as a child with his parents in 2009 and became a U.S. citizen in October 2010, but chose not to relinquish his Syrian citizenship. Although he claims to have no attachment to Syria, if he is asked to renounce his Syrian citizenship, it would be something he would consider. (Item 4) He is a full-time employee of a defense contractor and has been serving as a software analyst since December 2022, and is also a part-time employee at a university serving as a biomedical engineer since August 2019. A 2012 high school graduate, he received an associate degree in 2016, and a bachelor's degree in 2019. He has never served in the U.S. military. He has never held a U.S. security clearance. He was married in 2023.

Drug Involvement and Substance Misuse

On February 10, 2017, in Sec. 23: Illegal Use of Drugs or Drug Activity, of his SF 86, Applicant reported that because of seeing a picture of the dead bodies of two of his beloved cousins on Facebook after the Syrian revolution broke out, "something broke inside of [him] that day, and [he] lost [his] inner source of power. [He] became unmotivated and could not find a purpose or focus to [his] life." As a result, between May 2011 and January 2014, he would smoke marijuana mixed with tobacco in cigarette form at least twice a day when he first woke up and before he went to sleep. During that period, he purchased 3.5 grams of marijuana once a week "to get high so [he] can care less about the world around [him]."

In addition, during the same period, after being injured in an automobile accident and being prescribed oxycodone for one month, Applicant started using the drug socially at parties because it made him feel euphoric (and drowsy). He purchased oxycodone pills and took one pill every eight hours with the strength increasing over time from 5 mg. to 30 mg. so that he could be "under the influence." Eventually, he had to take two of the 30

mg. pills to achieve the same buzz, and he became reliant and physically and emotionally dependent on it. In January 2014, he sought guidance from a healthcare provider and decided to quit “cold turkey” and stop betraying his mother who had sacrificed her time, money, and effort for him. Since quitting, Applicant claimed that he “never thought of getting back to that miserable form of life. [He] chose to be free, not a slave to a substance, even if offered for free, [he] would not touch it.” (Item 3 at 35-39; Item 4) Applicant’s misuse of oxycodone was not raised as a security concern by the Government.

On December 22, 2022, in Sec. 23: Illegal Use of Drugs or Drug Activity, of his SF 86, Applicant’s story changed. He reported that his marijuana use had continued until at least October 2022, but that he had not continued using oxycodone. He said that his marijuana use had always been home-based, and that, while he abstained between 2016 and 2018, he resumed smoking marijuana in 2019. He noted that marijuana use was legal in the state where he resided, and he used it occasionally to think about his projects from a different perspective. He claimed that he stopped smoking marijuana once he accepted his current job. (Item 2 at 47-49)

During an interview conducted by an OPM investigator on February 21, 2023, Applicant acknowledged that in 2019, he resumed smoking marijuana occasionally at social events, parties, holidays, or when he was working on a project. He purchased about seven grams of marijuana legally at a state dispensary for about \$70 or \$80. He stated that he stopped using marijuana when he accepted his new job. (Item 4)

After he submitted his SF 86, Applicant again resumed using marijuana in January 2023, following the funeral of a friend’s family member. The funeral brought back memories of his Syrian relatives. He purchased seven grams of marijuana from the state dispensary for \$45, mixed it with tobacco in cigarette form and smoked it (three puffs each time) on each of three days in early January 2023. At the time of the interview, he still had some of the marijuana he had purchased. He acknowledged that his employer had a no-drug policy and that he knew that marijuana use is federally illegal. (Item 4)

In his response to the interrogatories, Applicant admitted using marijuana on and off between 2011 and January 5, 2023. He has never sought nor received counseling for his substance abuse. (Item 4)

Applicant intends to use other coping mechanisms to deal with his emotions, such as working out, going for a run, or riding a bike. He declared that he will not use marijuana when he possesses a security clearance and is willing to undergo drug testing to prove that he is abstaining. (Item 4)

Foreign Influence

Both of Applicant’s parents, and one of his two sisters, are Syrian-born naturalized U.S. citizens residing in the United States. His other sister is a U.S. - born dual citizen of the U.S. and Syria. As of September 2023, while Applicant and his wife reside in one residence,

the remainder of his entire family resides together in another house in the same city in the United States.

The sole alleged security concern regarding foreign influence is that Applicant's father is a dual citizen of the United States and Syria, and that he is residing in Syria. (SOR 2.a.) Applicant clarified that his family had not seen his paternal grandparents since the family immigrated to the United States in September 2009 – approximately 14 years ago – and they learned that Applicant's grandmother was sick. Some time prior to February 2023, Applicant's father flew to Syria to visit with his very sick paternal grandmother. (Item 4) Applicant's father returned to the United States from that visit in January 2024. (Response to SOR; Response to FORM)

Applicant's mother is employed as a chef; his father is a mechanic; one sister is a research engineer; and his younger sister is still in school. Applicant also has two uncles, an aunt, and a cousin who are dual U.S.-Syrian citizens residing in the United States. Another uncle is a Syrian citizen and resident of Syria, but since 2019, they have had no in-person contact and only two or three Facebook contacts. Other than the mandatory Syrian military service of Applicant's father and two of his uncles, no member of Applicant's immediate or extended family has had any foreign government affiliations, to include any foreign intelligence, military, or security service. (Item 4)

Applicant noted that he has lost more than 40 of his beloved family members at the hands of the current Syrian regime. (Response to FORM)

Syria

The Syrian Arab Republic (Syria) is ruled by an authoritarian regime dominated by the Socialist Ba'ath Party which is currently engaged in a full-scale civil war with an armed Syrian opposition. Sources estimate that the conflict has resulted in over 500,000 deaths with many hundreds of thousands more wounded. The Syrian conflict has resulted in over 5.6 million registered Syrian refugees, and approximately 6.9 million people are displaced inside Syria, while 4.53 million remain in hard-to-reach and besieged areas. Attacks from the regime or other groups occur with little or no warning, and no part of Syria should be considered immune from violence. The potential exists throughout the country for unpredictable and hostile acts, including kidnappings, sniper assaults, terrorist attacks, small arms fire, improvised explosives, artillery shelling, airstrikes, the use of chemical weapons, large- and small-scale bombings, as well as arbitrary arrest, detention, and torture.

The U.S. Department of State has issued a Level 4: Do Not Travel Advisory regarding Syria, stating: "Do not travel to Syria due to terrorism, civil unrest, kidnapping, armed conflict, and risk of unjust detention." The U.S. Embassy in Damascus suspended its operations in February 2012. The Czech Republic serves as the protecting power for U.S. citizens in Syria. The range of consular services that the Czech Republic provides to U.S. citizens is extremely limited, and the U.S. government is unable to provide emergency services to U.S. citizens in Syria. There is an ongoing and increased risk of

kidnapping of U.S. citizens and Westerners throughout the country. U.S. citizens remain a target, and many abductions having occurred since mid-2012.

Despite successes, the terrorist landscape in Syria grew more complex in 2017. ISIS, al-Qaida (AQ), and their affiliates have proven to be resilient, determined, and adaptable, and they have adjusted to heightened counterterrorism pressure in Syria and elsewhere. The return or relocation of foreign terrorist fighters from the battlefield has contributed to a growing cadre of experienced, sophisticated, and connected terrorist networks, which can plan and execute terrorist attacks. ISIS, AQ, and its affiliates continued to maintain safe havens amidst the fragile political and security climate across the region, particularly in Yemen and Syria.

President Bashar Assad has ruled Syria since 2000. The constitution mandates the primacy of Ba'ath Party leaders in state institutions and society, and Assad and Ba'ath party leaders dominate all three branches of government as an authoritarian regime. An uprising against the government that began in 2011 continued throughout the year. Syria's 2021 presidential election and 2020 parliamentary election resulted in the election of Assad and 250 People's Council (Syrian parliament) seats for the Ba'ath Party-led National Progressive Front, respectively. Both elections took place in an environment of widespread government coercion, and many Syrians residing in opposition-held territory did not participate in the elections. Observers did not consider the elections free or fair.

Designated in 1979 as a State Sponsor of Terrorism, Syria continued its political and military support to a variety of terrorist groups. The regime continued to provide weapons and political support to Lebanese Hezbollah (LH) and continued to allow Iran to rearm the terrorist organization. The Assad regime's relationship with LH and Iran grew stronger in 2017 as the regime became more reliant on external actors to fight regime opponents. President Bashar al-Assad remained a staunch defender of Iran's policies, while Iran exhibited equally energetic support for the Syrian regime.

Over the past decade, the Assad regime's permissive attitude towards AQ and other terrorist groups' foreign terrorist fighter facilitation efforts during the Syria conflict in turn fed the growth of AQ, ISIS, and affiliated terrorist networks inside Syria. The Syrian government's awareness and encouragement for many years of terrorists' transit through Syria for the purpose of fighting Coalition Forces is well documented. Those networks were among the terrorist elements that brutalized the Syrian population in 2017. Additionally, Shia militia groups, some of which are U.S. designated Foreign Terrorist Organizations aligned with Iran, continued to travel to Syria to fight on behalf of the Assad regime. In addition, the governments of Russia, Turkey, and Iran were involved in armed conflicts throughout Syria. Moscow is using its involvement in Syria, Libya, and Sudan to increase its clout, undercut U.S. leadership, present itself as an indispensable mediator, and gain military access rights and economic opportunities.

During 2018, Syrian government-linked paramilitary groups reportedly engaged in frequent violations and abuses, including massacres, indiscriminate killings, kidnapping of civilians, arbitrary detentions, and rape as a war tactic. Syrian government-affiliated militias, including LH, supported by Iran, repeatedly targeted civilians. The Syrian

government took no steps to investigate, prosecute, or punish officials who committed human rights violations or abuses. Impunity was pervasive and deeply embedded in the security forces and elsewhere in the Syrian government.

In December 2015, President Obama signed into law the Visa Waiver Program Improvement and Terrorist Travel Protection Act of 2015, which amended the existing Visa Waiver Program. Under the 2015 amendment, citizens of Iran, Sudan, and Syria are ineligible to travel or be admitted to the United States under the Visa Waiver Program. The exclusion of these countries from waiver eligibility reflects the determination of the U.S. Secretary of Homeland Security that the presence of an individual in those countries increases the likelihood that the individual is a credible threat to the national security of the United States; that a foreign terrorist organization has a significant presence in the country; or that those countries are a safe haven for terrorists.

On September 24, 2017, President Trump suspended the “entry into the United States of nationals of Syria as immigrants and nonimmigrants” due to “significant inadequacies in [Syria’s] identity-management protocols, [its failure] to share public safety and terrorism information,” and Syria’s status as “the source of significant terrorist threats.” Subject to limited exceptions for dual-nationals, current visa holders, other narrow categories, and the U.S. Department of Homeland Security’s authority to waive the ban “in the national interest,” Syrian nationals are categorically banned from entering the United States.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Or. 10865, as amended and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)). “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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. 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))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, at 531)

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

In addition, on December 21, 2021, the DNI issued Memorandum ES 2021-01529, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, which states in part:

. . . disregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position....

Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security

workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF 86), Questionnaire for National Security Positions.

The guideline notes several conditions under AG ¶ 25 that could raise security concerns in this case:

(a) any substance misuse (see above definition);

(c) illegal possession of a controlled substance, including . . . purchase;
and

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used marijuana, on and off, between May 2011 and January 5, 2023. Although he repeatedly claimed that he was not going to use marijuana in the future, for various reasons, he always resumed its use. Between May 2011 and January 2014, he smoked marijuana at least twice a day. He also purchased 3.5 grams of marijuana once a week to get high. In December 2022, he acknowledged that his marijuana use had continued until at least October 2022. He said that while he abstained between 2016 and 2018, he resumed smoking marijuana in 2019. He claimed that marijuana was legal in the state where he resided, and he used it occasionally to think about his projects from a different perspective. He said he stopped smoking marijuana once he accepted his current job. However, during an interview conducted by an OPM investigator on February 21, 2023, Applicant acknowledged that in 2019 he resumed smoking marijuana occasionally at social events, parties, holidays, or when he was working on a project. He purchased about seven grams of marijuana legally at a state dispensary for about \$70 or \$80.

After he submitted his SF 86, Applicant again resumed using marijuana in January 2023, following the funeral of a friend's family member. The funeral brought back memories of his Syrian relatives. He purchased seven grams of marijuana from the state dispensary for \$45 and smoked it (three puffs each time) on each of three days in early January 2023. At the time of the interview, he still had some marijuana left. He acknowledged that his employer had a no-drug policy and that he knew that marijuana use is federally illegal. In his response to the interrogatories, Applicant finally admitted using marijuana on and off between 2011 and January 5, 2023. Applicant has never sought nor received counseling for his substance abuse. AG ¶¶ 25(a) and 25(c) have been established. As for AG ¶ 25(g), Applicant's repeated resumption of marijuana use, after claiming he would not do so, and even after he submitted an SF 86, indicates a failure to clearly and convincingly commit to discontinue such misuse, and thus, it too has been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's periodic purchases of marijuana and his use of marijuana occurred on various occasions, interspersed with periods of abstinence, between May 2011 and January 2023 – a period of over a decade, and purportedly ceased merely 20 months ago. At times, his marijuana use was daily and other times it was motivated by projects, stress, and social events. Because of the various motivations he discussed, it is difficult to determine that similar circumstances would not reestablish motivation in the future, especially after his repeated resumption of such use after declaring that he would not do so. He was aware that his employer had a no-drug policy, and he knew that marijuana use is federally illegal.

A person should not be held forever accountable for misconduct from the past, and continued abstinence is to be encouraged. But his repeated resumption after previous declarations of no intending not to do so, as well as his use of marijuana after submitting his SF 86, raises substantial doubt as to Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply, and AG ¶ 26(b) minimally applies.

Guideline B, Foreign Influence

¶ 6: The security concern relating to the guideline for Foreign Influence is set out in AG

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 conditions that could raise security concerns under AG ¶ 7:

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

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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

As noted above, the sole alleged security concern regarding foreign influence is that Applicant's father is a dual citizen of the United States and Syria, and that he is residing in Syria. His father is a permanent resident of the family residence that he shares with Applicant's mother and sisters in the United States and is not far from where Applicant and his wife now reside. Applicant's father learned that Applicant's paternal grandmother – a citizen and resident of Syria – was sick, so his father flew to Syria to see and care for her before returning to the United States in January 2024. His anticipated return – supported by an electronic ticket receipt and a statement – was reported to DOHA on January 9, 2024. The information was verified in April 2024 when Applicant responded to the FORM.

The Government argues that “Applicant should . . . be denied a security clearance since his father is a dual citizen of the United States and Syria and is residing in Syria. The residence of Applicant's father is the real concern in this matter due to a host of reasons laid out in the Government's request for Administrative Notice.” Under the factual circumstances determined herein, despite the alleged security concerns regarding the political situation in Syria, and the professed possible heightened risk involving Applicant's father, AG ¶¶ 6(a), 6(b), and 6(e) have not been established.

I am persuaded that Applicant's loyalty to the United States is steadfast and undivided and he has such deep and longstanding relationships and loyalties in the United States, that he can be expected to resolve any potential conflict of interest in favor of the U.S. interest. In this instance, because of his background, the degree of “heightened risk” or potential conflict of interest due to his father's whereabouts is dramatically reduced to zero.

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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See *also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

I have incorporated my comments under Guideline H and Guideline B in my whole-person analysis, and I have considered the factors in SEAD 4, App. A, ¶¶ 2(c) and 2(d). After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude that Applicant proffered substantial mitigating evidence, which was more than sufficient to overcome the disqualifying conditions established under Guideline B. However, the same cannot be said about the security concerns under Guideline H.

Applicant's periodic purchases of marijuana as well as his use of marijuana occurred on various occasions between 2011 and 2023, interspersed with periods of abstinence – a period of over a decade – and purportedly ceased merely 20 months ago. As noted above, at times, his marijuana use was daily and other times it was motivated by projects, stress, and social events. He was aware that his employer had a no-drug policy, and he knew that marijuana use is federally illegal. Nevertheless, his repeated resumption of purchasing and using marijuana after declaring he had no intention to do so, and his using marijuana after submitting his SF 86, raise substantial doubt as to Applicant's current reliability, trustworthiness, and good judgment. For these reasons, I conclude Applicant has failed to successfully mitigate the security concerns arising from his drug involvement and substance misuse.

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 H:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a.	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge