DATE: June 22, 2007

In re:	)	
	)	ISCR Case No. 05-13737
SSN:	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT
Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT
Richard Moorhouse, Esq.
Emily Parker, Esq.

SYNOPSIS

______Forty-one-year-old Applicant is a Syrian-born, naturalized United States citizen. Although he has much more substantial connections to the United States than to Syria, he has immediate family members who are citizens of and live in Syria, and he has frequent contact with them. Because of Syria's poor human rights record and hostility towards the United States government, he must overcome a heavy burden to mitigate security concerns. He failed to meet this heavy burden. Security concerns pertaining to foreign influence are not mitigated. Clearance is denied.

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STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 21, 2006, DOHA issued a Statement of Reasons (SOR)[1] detailing the basis for its decision–security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on May 26, 2006, and elected to have a hearing before an administrative judge. DOHA received the case on January 10, 2007, and it was assigned to me the same day.

On January 24, 2007, DOHA issued a notice of hearing scheduling the case to be heard on February 14, 2007. On February 10, 2007, DOHA issued an amended notice of hearing changing the hearing date to February 28, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented three exhibits, which were marked as Government Exhibits (GE) 1 through 3, without objection. Applicant presented two exhibits, which were marked as Applicant Exhibits (AE) A and B. I held the record open to afford the Applicant time to submit additional material. Applicant did submit additional material which was forwarded by Department Counsel without objection and marked AE C.

As requested by Department Counsel, I took administrative notice or official notice of various facts derived from certain matters about Syria and the nature of its government as described in the government's Administrative Notice and accompanying documents marked as Ex. I. Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* 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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice in 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). Applicant did not object to my consideration of Exhibit I, and I took administrative notice of them. Tr. 11-13. DOHA received the transcript (Tr.) of the proceeding on March 12, 2007.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations except ¶ 1.b. His admissions are incorporated into my findings, and after a thorough review of the record, I make the following findings of fact:

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[1]Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

Applicant is a 41-year-old principal network engineer employed by a defense contractor. He has been with his current employer since April 2006 and is a first time applicant for a security clearance. Tr. 84-86, GE 1. Applicant became a naturalized U.S. citizen in March 2004 and holds a U.S. passport issued in March 2004. GE 1. He is unmarried with no dependents. He previously married in June 1988 and divorced in December 2000. GE 1.

Applicant was born and for the most part was raised in Syria. His parents were employed as teachers by the Syrian Ministry of Education and spent their teaching careers in Syria, except for two postings to Yemen and Kuwait (SOR ¶ 1.d). Applicant's father is 76 years old and his mother is 70 years old, and they along with Applicant's younger brother are resident citizens of Syria (SOR ¶¶ 1.a.). Both his parents retired approximately ten years ago and receive a small pensions from the Syrian government. Tr. 37, 58. Applicant's older 44-year-older brother lives in the U.S. and is a citizen of Syria (SOR ¶ 1.b). Tr. 58. Applicant's 40-year-old younger sister is a dual citizen of Syria and Germany. She currently is a housewife and resides with her husband in Germany (SOR ¶ 1.c.).

In 1983, Applicant's father was posted to the U.S. by the Syrian government for a four-year tour. Applicant along with his mother and two younger siblings, accompanied him and took up residence in the U.S. Applicant's older brother was already in the U.S. attending college. Tr. 54. When his father completed his posting, the family returned to Syria in 1987, except for Applicant and his older brother who remained behind in the U.S. to complete college.

In September 1991, Applicant was awarded a bachelor of science degree in computer engineering. Following his graduation from college, Applicant worked primarily in the information technology field for several different employers until he secured his present employment. In addition to his college degree, Applicant has been certified by Novell, MCI Microsoft, CISCO, and CCIE. Tr. 32.

Since Applicant's parents returned to Syria in 1987, he has visited his family approximately six times, each visit averaging two weeks, with the most recent visit being in 2005. Tr. 36-37, 40-41. Applicant's parents own the apartment they live in, which Applicant estimates is worth "about $50,000.00." Tr. 37-38. Neither Applicant nor his parents have ever been contacted by any official of the Syrian government. Tr. 39. Applicant testified that if any pressure were put on his family members in Syria by any arm of the Syrian government, he would report such contact to his security officer. Tr. 49.

Shortly after Applicant became a U.S. citizen in 2004, he submitted immigrant visa petitions to bring his parents and younger brother to the U.S. His petitions were complete as of December 2006, and his parents and brother were waiting to be contacted by the U.S. Embassy in Damascus for further processing. Tr. 42-43, AE A. At the time of his hearing, Applicant was of the belief it would take an additional two to six months to process his parents' petitions and up to ten years to process his brother's petition. Tr. 44, 47. In any event, all three petitions to come to the U.S. were and are in a pending status. Applicant's understanding is when his parents' visa petition is finally approved, they will take up permanent residency in the U.S. and not return to Syria. Tr. 46.

Applicant sends approximately $5,000.00 to $8,000.00 per year to his father in Syria (SOR ¶ 1.e.). He communicates with his parents by telephone "A couple of times a month. Maybe two

or three times a month." Tr. 78. He often times speaks with his brother when he calls his parents and also communicates with his brother by e-mail "every two months or three months or something." Tr. 79-80.

Applicant owns a condominium valued at approximately $340,000.00 and has a net worth of "about $150,000 to $200,000." Tr. 87. He conducts all his banking in the U.S., has a 401 K account and a separate retirement account. Tr. 88. He is registered to vote in the U.S., has worked on his local congressman's election campaign, and owns two automobiles. Tr. 37, 88. AE B.

Applicant's friend of 21 years, who is the president of a company specializing in computer analysis and human safety analysis, described him as honest, straight forward, and dependable. Tr. 97. The Director of Information Technology and Applicant's direct supervisor stated approximately 90% of their company's work is through government contracts and about 25% of this work is classified. Their company holds a Facility Security Clearance at one of their offices and has established security compliance measures which are well-known among the company employees. Applicant's direct supervisor interacts with him on a daily basis and describes him as reliable, loyal, efficient, with a strong work ethic and one of the company's "best" employees. AE C.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability,

discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline B–Foreign Influence

Under Guideline B, a "security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure." Directive ¶ E2.A2.1.1.

One of eight possible foreign influence disqualifying conditions (FI DC) could raise a security concern in this case. FI DC 1 applies where an "immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Directive ¶ E2.A2.1.2.1. "Immediate family members" include a spouse, father, mother, sons, daughters, brothers, and sisters. Directive ¶ E2.A2.1.3.1. Applicant's father, mother, two brothers, and sister are either "immediate family members" or persons to whom he "has close ties of affection or obligation" or both. They are also citizens of and live in or are connected to Syria. Although his older brother lives in the United States, and his younger sister lives in

Germany, and his parents and younger brother are in the process of emigrating to the United States, the group of relatives are considered as a whole.[2] Even if only one relative lives in Syria, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). However, such ties do raise a security concern under FI DC 1 and Applicant is required to present evidence of rebuttal, extenuation or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. *Id*.

Security concerns based on foreign influence can be mitigated by showing that any of the five foreign influence mitigating conditions (FI MC) apply. FI MC 1 recognizes that security concerns are reduced when there is "[a] determination that the immediate family member(s), (spouse, father mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." Directive ¶ E2.A2.1.3.1. Notwithstanding the facially disjunctive language of FI MC 1, the Appeal Board has decided that Applicant must prove that his family members, cohabitant or associates are not agents of a foreign power, and are not in a position to be exploited by a foreign power in a way that could force Applicant to chose between the person(s) involved and the U.S. ISCR Case No. 02-14995 at 5 (App. Bd. July 26, 2004).

The Appeal Board has held that "An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power" for purposes of FI MC 1. ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004). In a series of decisions, the Appeal Board has broadly defined "agent of a foreign power."[3]

The second prong of FI MC 1 provides that it is potentially mitigating where the "associate(s) in question are not . . . in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person involved and the United States." The Appeal Board interprets this language as establishing an absolute standard; i.e., an applicant must affirmatively prove that there is *no possibility* that anyone might attempt to exploit or influence a foreign relative or acquaintance in the future. *See* ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17,

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[2]*See e.g*., ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (noting security concerns because applicant's brother and mother-in-law live in Iran); ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005) (indicating low relevance if foreign relatives spend part of each year in the United States).

[3]The discussion in this opinion of FI MC 1 relies heavily on and occasionally quotes without attribution the discussion of this same issue in ISCR Case No. 03-10312 at 6-9 (A.J. May 31, 2006). *See also* ISCR Case No. 03-10954 at 3 (App. Bd. Mar. 8, 2006) (attorney/consultant to an entity controlled by a foreign ministry is an "agent of a foreign power"); ISCR Case No. 03-19101 at 6 (App. Bd. Jan. 21, 2006) (part-time secretary for the Ministry of Religion is an "agent of a foreign power"); ISCR Case No. 02-2454 at 4-5 (App. Bd. June 29, 2004) (employee of a city government was an "agent of a foreign power"); ISCR Case No. 03-04090 at 5 (App. Bd. Mar. 3, 2005) (employee of the Israeli government is an "agent of a foreign power"); ISCR Case No. 02-29143 at 3 (App. Bd. Jan. 12, 2005) (a member of a foreign military is an "agent of a foreign power").

2006) ("[FI MC] 1 does not apply because, as is well settled, it requires that Applicant demonstrate that his relatives are not in a position which could force Applicant to choose between his loyalty to them and his loyalty to the United States."); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005).

FI MC 1 does not, by its express terms, exclude from consideration applicants with relatives or associates in countries where terrorism has occurred, any more than it excludes person from countries where there are foreign governments, foreign political organizations, or foreign non-governmental organizations. Rather, it focuses on a very specific type of threat–the risk of a foreign power exploiting an applicant's foreign relatives in such a way as to cause an applicant to act adversely to the interests of the United States. The Appeal Board has limited the applicability of FI MC 1 where there is a history of terrorist activity in the foreign country in question. ISCR Case No. 03-22643 (App. Bd. Jun. 24, 2005); ISCR Case No. 02-22461 at 5 (App. Bd. Oct. 22, 2005).

Applicant's parents receive pensions from the Syrian government and are dependent in part on this income to meet their day-to-day expenses. Such dependence on the Syrian government places his parents in a potentially vulnerable situation.

Applicant's older brother holds dual citizenship with the United States and Syria. He lives in the United States and not in Syria as alleged in SOR ¶ 1.b.

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. The hostility of Syria to the United States places a "very heavy burden of persuasion" on Applicant to demonstrate that his immediate family members in Syria do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his family members. With its adversarial stance and its dismal human rights record, it is conceivable that Syria would target any citizen in an attempt to gather information from the United States.

There is no evidence that his elderly father and mother, his two brothers, and sister are or have been political activists or journalists, challenging the policies of the Syrian government. Likewise, there is no evidence that these relatives work for the Syrian government or military or any news media. There is no evidence that the Syrian government has approached any of his Syrian family for any reason, and in particular, has not approached them since his visits to Syria, the most recent being in 2005. There is no evidence that his family living in Syria engages in activities which would bring attention to themselves or that they are even aware of his work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Syrian government, which regularly seeks to quiet those which speak out against it. Applicant deserves some credit because of the reduced possibility that Syria will exploit his family, but FI MC 1 cannot be applied in this case because even if there was substantial evidence of the "family members' low-key noncontroversial lifestyle, and the fact that the Syrian government has not contacted them about Applicant in the past, such factors are insufficient to support the application of FI MC 1" because of the nature of the Syrian government and its relationship to the United States.

FI MC 3 can mitigate security concerns where "contact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. Applicant has monthly contacts by telephone with his family members living in Syria, has visited them six times in Syria, and sends his parents money. FI MC 3 does not apply because his contacts with them are not casual and infrequent. *See* ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).[4]

Finally, none of the individual family circumstances discussed above are determinative. Rather, these circumstances must be considered together under the "whole person concept," which includes consideration of the absence of evidence concerning: his family's lack of governmental connections; and the absence of financial dependence on the Syrian government. On the other hand, the nature of Syria's government, its human rights record, and its relationship with the United States create a very heavy burden of persuasion to overcome the security concerns raised by the fact that the Applicant has family members living in Syria.

Applicant's statement about his loyalty to the United States is credible, and there is no reason to believe that he would take any action which could cause potential harm to his U.S. family or to this country. If the Syrian government should threaten harm to his family members living in Syria to obtain classified information from him or otherwise contact him, I am persuaded that he would report this activity to the U.S. authorities. There is no evidence that he has failed to follow the rules or failed to require those around him to do the same on projects requiring security clearances. There is no evidence that he lacks the respect and trust of his employer, his friends, and family or that he lacks honesty and integrity. There is no evidence that he has revealed to his family in Syria the nature of his work or about applying for a security clearance. I cannot, however, find that Applicant has mitigated the government's security concerns as to Guideline B because the absence of evidence does not overcome the heavy burden the Appeal Board has placed on applicant's similarly situated.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. The directive lists nine adjudicative process factors which are used for "whole person" analysis. Foreign influence and foreign preference do not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc. Accordingly, the eighth adjudicative process factor is probably the most relevant. Directive ¶ E2.2.1.8. The eighth factor provides, "the potential for pressure, coercion, exploitation, or duress."[5] Syria's government is

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[4]In regard to FI MC 3, the Appeal Board had determined that contacts with relatives living in a foreign country must be both casual and infrequent. *See* ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006).

[5]*See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth whole person factor apparently without discussion of the other factors was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole whole person factor mentioned is eighth factor in discussion of Judge's whole person analysis

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hostile to the United States and does not conform to widely accepted norms of human rights. Applicant has close family members who live in Syria. He has frequent contact with them. Under the circumstances, there is a significant possibility of pressure, coercion, exploitation or duress.

As indicated in the statement of facts, there are many other countervailing, positive attributes to Applicant's life as a U.S. citizen that weigh towards granting a clearance. He is patriotic, loves the United States, and would not permit Syria to exploit him. He has close ties to the United States. He is a U.S. citizen and has lived his adult life in the U.S. His older brother lives in the U.S. He owns property in the United States, and his parents and younger brother are in the process of moving to the United States. The "whole person" analysis in a Guideline B case should include "the totality of an applicant's conduct and circumstance[s] (including the realistic potential for exploitation)" as well as the eighth factor discussed in the previous paragraph.[6] In this case, Applicant's potential for exploitation is low. I base this finding on his credible and sincere testimony, and I do not believe he would compromise national security, or otherwise comply with any Syrian threats. However, the absence of evidence[7] under the Appeal Board's jurisprudence is of very limited probative value, and information about his strong connections to the United States are insufficient to outweigh the Guideline B concerns. *See* n. 30, *supra*. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence.

Based on the Appeal Board's Guideline B jurisprudence pertaining to cases involving Syrian-Americans, who have frequent contacts with family members living in Syria, Applicant's security eligibility and suitability cannot be approved. I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[8] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has failed to mitigate or overcome the government's case. I conclude Applicant is not eligible for access to classified information.

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for Iranian-American's case).

[6]*Compare* ISCR Case No. 03-23259 at 2 (App. Bd. May 10, 2006) (noting Judge did not assess "the realistic potential for exploitation" but affirming denial of clearance based on contacts with Iranian family members); *with* ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation").

[7]There is no record evidence to contradict Applicant's testimony that establishes: (1) any connection or contact between Applicant and any foreign government; (2) any financial interests between Applicant and any foreign nation, or any foreign business concern; (3) his failure to follow the rules or his failure to require those around him to do the same on projects requiring security clearances; (4) any lack of the respect and trust of his employer, his friends, or family; and (5) a problem in the areas of honesty or integrity. I conclude, however, that the government has no burden to present such evidence, and the absence of evidence does not support application of any mitigating conditions. *See* ISCR Case No. 02-21927, 2006 DOHA LEXIS 229, at *39-*41 (A.J. May 17, 2006) (discussing absence of evidence and relationship to burden shifting).

[8]*See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c. - e.:	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider
Administrative Judge