

KEYWORD: Foreign Influence

DIGEST: Applicant, a defense industry employee with 20 years in the U.S. as a student and engineer, has held a security clearance without incident for over eight years. He mitigated security concerns under Guideline B arising from parents and three siblings living in Syria and having traveled there five times since 1997. He showed by his own testimony and of his supervisors and colleagues, that he understands security requirements and has strong ties to the U.S. and is not a security risk. Clearance is granted.

CASENO: 06-18337.h1

DATE: 08/23/2007

DATE: August 23, 2007

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In Re:)	
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-----)	ISCR Case No. 06-18337
SSN: -----)	
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Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Andrew W. Dyer, Jr., Esq.

SYNOPSIS

Applicant, a defense industry employee with 20 years in the U.S. as a student and engineer, has held a security clearance without incident for over eight years. He mitigated security concerns under Guideline B arising from parents and three siblings living in Syria and having traveled there five times since 1997. He showed by his own testimony and of his supervisors and colleagues, that he understands security requirements and has strong ties to the U.S. and is not a security risk. Clearance is granted.

STATEMENT OF THE CASE

On August 31, 2006, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, received September 29, 2006, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 16, 2007. A Notice of Hearing was issued March 2, 2007 for a hearing held on March 23, 2007. The Government and Applicant each introduced two exhibits which were accepted into evidence. The government requested that administrative notice (AN) be taken of five official government documents. Applicant and three others testified on his behalf. The transcript was received on April 3, 2007. The record was left open for submission of written arguments by counsel for both Applicant and the government which were concluded on May 5, 2007.

FINDINGS OF FACT

_____Applicant admitted all three allegations under Foreign Influence-Guideline B with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 44-year-old employee of a major defense contractor working as an engineer since August, 2000. He was born in Syria and came to the U.S. in 1987 at age 23 after one year of college in Syria to visit his brother at a university where he was studying. Applicant decided to continue his education in the U.S. and enrolled at the same mid-western state university his brother attended and lived with him and his wife (Tr. 77). He studied English intensively sometimes with his sister-in-law who was born in the U.S. He received a B.S. degree in engineering in 1992 followed by a Master's degree and a Ph.D. in 1998. His dissertation was in signal processing, a field closely tied to development of radar. In 1992 he married a U.S. born citizen from the same state where he

was studying. He worked in various jobs while in the university and as a teaching fellow during the period of his doctoral candidacy sponsored by one of his professors.

Applicant was employed by another large defense contractor between 1998 and 2000 in a major metropolitan area. In 2000 he moved to his present location because of his present work and to obtain a better school for one of his two children who has a form of autism. The children are now nine and five years of age.

Applicant became a U.S. citizen in 1996 and felt it was a great honor to be a U.S. citizen. He wanted to become a part of the country because he shared the same beliefs as the U.S., and the U.S. was the place he wanted to live and raise a family (Tr. 84). He has held a security clearance since 1999 when he was first employed by a defense contractor. His current application for security clearance (SF 86) is for a ten year renewal and was filed in 2005 (Exh. 1). He was interviewed by a defense investigator in April, 2006 and fully discussed the circumstances of his family and travels (Exh. 2).

Applicant's parents live in Syria in a suburb of Damascus where his father operates a small electronics repair shop for television, radios, and appliances (Tr. 90). His mother is a homemaker who has not been in good health. Both parents are in their mid-70's and have no connection with the government. His father served a required tour in the military before the birth of Applicant. He telephones his parents once a month especially because of the health of his mother (Tr. 98).

Applicant has one brother and two sisters who also live in Syria. His brother is a truck driver with little education who also served a required tour in the military as a young man (Tr. 116). Applicant was sponsoring the sisters for citizenship in the U.S. but one recently married and is no longer interested in coming to the U.S. (Tr. 92). He continues to sponsor the second sister who is single and is a manager for a small business importing building materials from Germany (Tr. 92). He has limited contacts with his siblings in Syria. He contacts them by phone 3-4 times a year (Tr. 100). The young children of his siblings in Syria attend private schools of an internationally renowned private system (Tr. 135).

None of the family in Syria have any contacts or work with government (Tr. 94). Applicant's brother with whom he lived while in school in the U.S. lives in the U.S. and is also employed as an engineer with another major defense contractor. Applicant regards him as a role model and maintains close contact with him. He is the only relative who knows what Applicant does and for whom he works. They do not discuss their own or the other's work with other family members (Tr. 124).

Applicant has traveled to Syria five times since 1997 when he first took his wife to meet his family. His other trips were in 2000 so that his older child could meet his parents, and in 2001 for a family wedding. This trip was encouraged by his colleagues since he had recently began work for his present employer, was working hard, and they thought he needed a vacation (Tr. 29). The trips in 2004 and 2005 were related to the illness of his mother (Tr. 100-102). The last two trips were taken alone for cost reasons. He has always used his U.S. passport for travel to Syria. He has notified his security office of all of his trips since his employment in the defense industry (Tr. 41) even though company policy did not fully require it (Tr. 62). He was not required to give a report on his return and did not do so. He has never had difficulty in travel or been approached by any suspicious

contacts (Tr. 136). If anything such as that occurred, he knows to report the events to the cognizable security authority. His family in Syria have had no difficulty from the government or any other group (Tr. 137). His father indoctrinated his children against working for the government and encouraged them to work for the private sector and to have little to do with the government (Tr. 122).

Because of current security implications, Applicant does not intend to return to Syria even though he has continuing concerns for his mother. He regards Syria as a place with no future and a corrupt government (Tr. 127-130).

Applicant has never voted in Syria and has consistently voted in the U.S. in local, state, and federal elections since becoming a citizen (Tr. 105). Although his parents own some property in Syria in the form of a house and store, Applicant and his brother in the U.S. have disavowed any interest in inheriting it, and have designated their share to go to their siblings in Syria (Tr. 106). He provides no financial support to his family in Syria only giving them only small gifts on special occasions. His annual salary is \$138,000. His wife does not work. The equity in his home is \$350,000 and he has a 401k investment plan valued at \$100,000 (Tr. 131). He has set aside funds for his children's education since their birth. All his financial assets are in the U.S. Applicant is active in civic affairs in his community, works with the cub scouts, and an organization providing support for children with autism. He also has a small organization promoting interest in science among students.

Applicant is close to his wife's family in the U.S. Although they are Christians and he is Muslim, all accept each other and have a solid family relationship. They visit together at least four times a year. The family vacations are to visit his wife's parents and his brother's family.

Applicant is highly regarded for his skills, diligence, integrity, and knowledge of security requirements, by his three supervisors and colleagues who testified for him at the hearing (Tr. 23-61) and in the two submitted reference letters (Exh. A and B). All come from persons who have held security clearances for many years and have worked with him on secure projects. He is regarded as having one of the best work ethics in the organization. Since his employment, he has been given increased responsibilities and is regarded as one of top lead engineers. He is regarded as a key member of the engineering staff working on his company projects. He is highly regarded for trustworthiness with a reputation for honesty and integrity. He knows security regulations and requirements and goes beyond the company security requirements. He is described as a "stalwart" who follows all the rules and regulations. He knows that any possible breach of security requires immediate reporting to security officers. During his almost ten years in the defense industry, he has never had a security violation.

POLICIES

"[N]o 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 occupy a position that will give that person access to such information." *Id.* at 527

An evaluation of whether the applicant meets the security guidelines includes consideration

of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Directive ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue a clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

_____ Conditions under Foreign Influence Guideline B that could raise a security concern and may be disqualifying include having an individual's immediate family 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.(E2.A2.1.1) Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. (E2.A2.1.2.1) Based on the evidence of record, including Applicant's admissions, the Government established reasons to raise security concerns because of foreign influence. Having established such reasons, Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Mitigating conditions that might be applicable to allegations relating to his family are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.) While his relatives are not agents of a foreign power, by definition parents and siblings are persons with close ties of affection. Thus, the specific mitigating conditions are not applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment

of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant has had a responsible position of trust in the defense industry and has done an excellent job for his company and a former employer for nine years. He has held a security clearance for eight of those years without incident. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S. He was educated in the U.S., and is integrated into U.S. culture after living here for 20 years beginning as a college student. His total financial stakes are in the U.S. He has little cultural contact with his country of origin and has a negative view of the future there and the state of its government. He has taken appropriate steps to limit the amount of information that his family in Syria knows who he works for and the type of work he performs.

While there is no evidence in the documents submitted for administrative notice that Syria has engaged in economic or military espionage, it has an extensive record of harboring and supporting terrorist organizations and interfering in the affairs of its neighbor Lebanon. There is evidence of violations of human rights of its citizens including labor rights, freedom of the press, and freedom of expression (AN 1). Although the government is a one party state with the Baath party being the only recognized party, it is a secular state and has taken steps to limit extreme fundamentalism (AN 5).

The Syrian government has cooperated with the U.S. in attempting to limit movement of individuals linked with radical groups from crossing into Iraq and increased border security (AN 3) which is a continuing problem for U.S. troops stationed there. The U.S. has expressed disappointment that more is not being done and is working to improve the level of cooperation. The U.S. maintains diplomatic relations with Syria and views it as a strategic link to controlling militant radicals in the middle east particularly the transit via Syria into other neighboring countries. While Congress has placed sanctions on trade with Syria (AN 5) through the Syria Accountability Act, there have been recent visits by U.S. congressional delegations from both political parties in an attempt to open up a dialogue with its government to improve relations and obtain greater cooperation.

Applicant is a highly valued professional who knows how to deal with any pressures that might be brought against him by agents of a foreign government. He has taken appropriate steps to limit his contacts with Syria and gone beyond requirements of his company to comply with any possible security concerns of the U.S. or his employer. His financial and career stakes are in the U.S. where he has made a successful life since coming here over 20 years ago. Thus, he has spent most of his adult life in the U.S. His contributions to development of defense systems has been significant. To deny a security clearance after this extensive and successful a career record would not be in the national interest.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant

clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

_____ Paragraph 1 Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge