



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



In the matter of:)	
)	
)	ISCR Case No. 12-05863
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Jason Perry, Esq. and Arthur Draper, Esq.

02/28/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 3, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The actions was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on October 29, 2012, and requested a hearing before an administrative judge. The case was assigned to me on January 3, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

17, 2013. The hearing was held as scheduled on February 7, 2013. The Government offered Exhibits (GE) 1 through 8, and they were admitted into evidence without objection. Applicant and three witnesses testified. He offered Exhibits (AE) A through N, and they were admitted into evidence without objection. The record was held open until February 14, 2013, to allow Applicant to submit additional documents. He timely submitted an additional document, marked as AE O. Department Counsel had no objection, and it was admitted into evidence, and the record closed.¹ DOHA received the hearing transcript (Tr.) on February 15, 2013.

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Syria, Turkey, and Jordan.² Applicant did not object and the request was approved. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 37 years old. He was born in Syria and lived with his parents. In 2001 he married a U.S. citizen he met in Syria. He moved to the United States in 2005, and she sponsored him for permanent residence. He became a U.S. citizen in October 2010 and obtained an American passport the same month. His Syrian passport expired in September 2010, and he has not renewed it. He gave it to his facility security officer to destroy. He and his wife had no children and divorced in 2007. Applicant remarried in January 2012 and divorced in August 2012. His second wife was a U.S. citizen. He has an infant son from the marriage who was born in the United States.³

Applicant earned a bachelor's degree from 1996 to 2001, while living in Syria. He was awarded a prestigious scholarship from Britain and earned his master's degree there. He has no financial obligations to the school. He does not stay in contact with anyone from either institution.⁴

Applicant explained that he did not formally renounce his Syrian citizenship because he was told by friends if he sent a letter to the Syrian embassy to renounce his citizenship it would raise a red flag that he was working for the U.S. Government. He

¹ Hearing Exhibit IV is Department Counsel's memorandum.

² Hearing Exhibits I, II, III are the supporting documents to the Government's request for administrative notice.

³ Tr. 52-60, 66-67, 147 161, 163-165; AE M is a letter from the facility security officer confirming destruction of Applicant's Syrian passport.

⁴ Tr. 53, 70-75.

does not consider himself to be a dual citizen, but if the U.S. Government wants him to send a letter of renunciation he will do so. He has never worked for the Syrian government and has never voted in a Syrian election. He does not intend to ever return to Syria.⁵

A background check was done on Applicant by the FBI in 2006, and he was granted eligibility for a public trust position in 2009. He has held a secret clearance since 2011.⁶

Applicant has held steady employment in his field of expertise. He has worked in various mediums. From May 2008 to August 2008, Applicant worked for a foreign embassy in the United States (SOR ¶ 1.d). He wanted to improve his resume and increase his employment opportunities. He has no affiliation or allegiance to the country. He took the job to obtain experience in his field of expertise. At the time he was a permanent resident of the United States. He was not involved in any military issues. The job lasted for three months until the embassy terminated the position. He has had no contact with any embassy personnel, and he never developed any friendships while working there.⁷

Since 2008, Applicant has worked on a contractual basis with another government agency to provide simultaneous interpretation. He is often called upon by the agency for specific assignments. His current employer is aware of his part-time employment and supports him. Applicant was also employed for one semester as a part-time college instructor. He has been at his present job since June 2011.⁸

Applicant's parents left Syria recently and went to Turkey. They left Turkey a few weeks ago and were in Jordan temporarily. Applicant had applied for visas for his parents and they were granted visa interviews in Jordan.⁹ His mother had her interview immediately and shortly thereafter received her visa for entry into the United States. Applicant stated that his mother is waiting for the issuance of a permanent residency card, which was supposed to take ten days. Applicant's mother now lives with him in the United States. Applicant intends to provide her support and does not believe she ever intends to return to Syria. Applicant stated his mother intends to apply for U.S. citizenship when eligible. His mother has never worked for the Syrian government. Applicant acknowledged it is too dangerous to remain in Syria.¹⁰

⁵ Tr. 61-64.

⁶ Tr. 64.

⁷ Tr. 73-93, 139, 145, 161-162.

⁸ Tr. 73-93.

⁹ AE A, B, C, D, K.

¹⁰ Tr. 95-112.

Applicant's father had his interview in Jordan and was advised that the process could take from 2 to 60 days. He was told his visa was not denied, but it is just taking longer for processing. At this point, Applicant's father remains in Jordan waiting for his visa to be approved. Once it is approved he will move to the United States and live with Applicant. His father intends to apply to become a U.S. citizen when eligible. Applicant's parents' decision to move to the United States was made before the civil war in Syria. Applicant's father is 71 years old and he retired three years ago. He was an accountant at a candy store. He has also worked as a mechanic. He served in the Syrian military when he was 18. Other than his mandatory military service, he has never worked for the Syrian government. He owns a house and land in Syria, but due to the conflict there, Applicant speculated it is not worth much. Applicant maintains contact with his father as he awaits issuance of his visa.¹¹

Applicant has three brothers and a sister. His eldest brother is 43 years old. He is a teacher who is married with three children. He has never worked for the Syrian government. He fled to Turkey and lives with another brother there. His brother and his family do not intend to return to Syria. Their hope is to immigrate through the United Nations refugee program to either the United States or Canada. Applicant has minimal contact with his brother. When he does, it is an annual phone call or he hears news about him through his mother.¹²

Applicant's second brother is 40 years old. He owned a clothing store and is a tailor. He has never worked for the Syrian government. He moved to Turkey because of the war in Syria. Applicant stated his brother does not intend to return to Syria. He is married and has two children who are with him. He and his family are refugees. They intend to apply for immigration through the United Nations refugee program and hope to move to the United States or Canada. Applicant does not intend to sponsor him for immigration. Applicant stated he is not close to this brother. Since 2004, he has spoken to him once by telephone.¹³

Applicant's third brother is 32 years old. He is a partner with his second brother in the clothing store business. He has never worked for the Syrian government. He and his family are refugees in Turkey and they live with the third brother. He is married and has one child. Applicant has minimal contact with this brother. His brother also intends to immigrate through the United Nations refugee program.¹⁴

Applicant's sister is a teacher. She has never worked for the Syrian government. She is married and has four children. Applicant has not had any contact with his sister in two to three years. Her husband owns a satellite dish store. Applicant provided a

¹¹ Tr. 95-112, 157-159.

¹² Tr. 112, 124-127; AE I are the rental agreement documents for Applicant's family living in Turkey. They are listed as refugees on the documents.

¹³ Tr. 113-119.

¹⁴ Tr. 119-124.

document from his mother that explains Applicant's sister is now in Turkey with her family.¹⁵

Applicant recently had contact with his siblings because he was arranging for his parents' move to the United States.

Applicant traveled to Syria in 2005. He went there to have dental work because he did not have insurance, and he could not afford to have it done in the United States. He also visited family while there. Applicant returned to Syria in October 2008 to visit his mother who had health issues. He also visited other family members while there. Applicant used his Syrian passport for these visits because he was not yet a U.S. citizen. In March 2011 he returned to Syria to visit his parents. He was a U.S. citizen and traveled on his American passport.¹⁶

Applicant has no assets in Syria. He is financially solvent and has approximately \$380,000 in assets in the United States.¹⁷

Three witnesses testified on behalf of Applicant. An Army captain, who works with Applicant and has oversight over his work performance, considers him a great person. Applicant is able to use his knowledge to make outstanding contributions to the mission. Having worked with Applicant, he is confident of his dedication to the mission.¹⁸

Applicant's program manager testified on his behalf. She considers Applicant's work performance to be outstanding, and he is a wonderful employee. She has no hesitation in recommending him for a security clearance.¹⁹

Applicant's team leader testified on his behalf. He is Applicant's immediate supervisor. He considers Applicant one of the most motivated members of the team. He understands the nature of their mission. He considers Applicant a responsible person. He has no hesitation in recommending Applicant for a Top Secret clearance.²⁰

Syria

Syria is ruled by an authoritarian regime. The U.S. State Department has designated Syria as a state sponsor of terrorism. Syria provides safe-haven as well as

¹⁵ Tr. 127-130; AE O.

¹⁶ Tr. 131-138.

¹⁷ Tr. 67-68.

¹⁸ Tr. 22-33.

¹⁹ Tr. 33-41.

²⁰ Tr. 41-50.

political and other support to a number of designated Palestinian terrorist groups. The operational leadership provided by many of these groups is headquartered or sheltered in Syria, and the Syrian government allows such groups to receive and ship goods, including weapons, in and out of the country. It also provided diplomatic, political and material support to Hizballah in Lebanon and allowed Iran to supply this organization with weapons.

Syria has maintained its ties with its strategic ally, and fellow state sponsor of terrorism, Iran.

Since the transfer of sovereignty in Iraq in June 2004, Syria extended qualified support to the Iraqi government and pledged to cooperate in the areas of border security, repatriation of Iraqi assets, and eventual restoration of formal diplomatic relations.

Due to the government of Syria's support of terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq, both Presidents Bush and Obama determined Syria's actions constituted an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and declared a national emergency to deal with that threat. Executive orders were signed to block property of certain persons and prohibiting the export of certain goods to Syria. The executive orders remain in effect.

Syria has a poor human rights record. The three most egregious human rights violations are the right to peaceable change the government; massive attacks and strategic use of citizen killings as a means of intimidation and control; and denial of civil liberties.

Dual citizens and U.S. citizens of Syrian origin may be subject to compulsory military service in Syria, unless they receive an exemption prior to their entry into Syria.

The Syrian government conducts intense physical and electronic surveillance of both its citizens and foreign citizens.

In December 2011 the White House Press Secretary issued a statement that the United States is deeply disturbed by credible reports that the Assad regime continues to indiscriminately kill scores of civilians and army defectors, while destroying homes and shops and arresting protesters without due process.

Turkey

Turkey is a strategically significant country because of its location straddling Europe and Asia, and with borders to the Middle East.

There have been violent attacks throughout Turkey and there is a continuing threat of terrorist actions and violence against U.S. citizens and interest throughout the country. Domestic and transnational terrorist groups have targeted Turkish citizens and foreigners in Turkey for more than 40 years. The attacks have included bombings of both security and civilian targets in urban areas and there have been more than 30,000 deaths of Turkish citizens.

Terrorist bombings over the last eight years, some causing significant numbers of casualties, have struck religious, government, government-owned, political, tourist and business targets in Turkey. Terrorists do not distinguish between official and civilian targets.

There are reports of human rights abuses in Turkey. Security forces committed unlawful killings. Other abuses continue with respect to deficiencies in effective access to justice, lengthy pre-trial detention and lack of transparency in judicial processing.

There is concern with the government's interference with freedom of speech and the press. A disproportionate use of anti-terror law led to the arrest and prosecution of a number of journalists, writers, and political activist.

The law prohibits arbitrary arrest and detention; however, the Turkish government at times did not observe these prohibitions. Overcrowding in prisons remains a serious problem. Attorney access to detainees varied widely and in some instances police intimidated detainees who requested an attorney. The penal code contains multiple articles that directly restrict freedom of the press and speech. The laws and enforcement of them do not protect victims. Violence against women, including spousal abuse, is a serious and widespread problem. Honor killings of women continue to be a widespread problem. Honor killings of girls by immediate family members, sometimes by juvenile male relatives, occurred.

Jordan

The Kingdom of Jordan is a constitutional monarchy. The U.S. Department of State's 2011 Human Rights Report lists Jordan's three most significant human rights problems as their citizens' inability to peaceably change their government; abuses committed with impunity by security forces; and violence against women. Other human rights problems were arbitrary deprivation of life; torture or mistreatment; poor prison conditions, arbitrary arrest and denial of due process through administrative detention; prolonged detention and external interference with judicial decisions; infringement on citizens' privacy rights; and restrictions on freedom of speech, press, assembly, and association.

Legal and societal discrimination against Jordanians of Palestinian origin remains widespread. Such persons are subject to arbitrary withdrawal of their citizenship without due process; exclusion from services such as access to public assistance, education and medical services; and exclusion from the political process.

The Government of Jordan considers dual Jordanian-American citizens to be Jordanian citizens. Jordanian authorities may not inform the U.S. embassy of arrests, detentions, or accidents involving dual Jordanian–American citizens. Jordanian law subjects dual citizens to certain obligations; for example, males under the age of 37 are required to register for service in the Jordanian military.

Under Jordanian law, any adult male may prevent a female or child relative from leaving the country by registering a hold on their travel with Jordanian authorities. This is possible even if the child or woman only holds U.S. citizenship. Jordanian authorities consider such disputes to be family matters and the U.S. embassy has a limited ability to intervene.

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(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact 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 contacts 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) sharing 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.

AG ¶¶ 7(a) and (d) require substantial 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 or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

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.”²¹

Applicant worked for about three months for a foreign embassy in the United States. He had no affiliation with that country. The job was terminated and he has no contact with any people from the embassy. I find none of the above disqualifying conditions apply to facts alleged in SOR ¶ 1.d. I find in favor of Applicant on this allegation.

Applicant’s parents and siblings are citizens of Syria. His mother has been granted a visa and lives with Applicant in the United States. His father is in Jordan awaiting approval of his visa to also move to the United States and live with Applicant. All of Applicant’s siblings are refugees in Turkey having fled Syria. Applicant’s family relationships could potentially create a heightened risk of foreign inducement, manipulation, pressure, or coercion. I find the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8. The following are potentially applicable:

- (a) the nature of the relationship 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 and interests of the U.S.; and
- (b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests.

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

²¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States.

Applicant's mother is a citizen of Syria who lives in the United States. His father is waiting in Jordan for his visa to be approved to come to the United States and live with Applicant. Although Jordan has human rights issues, it is unlikely that his father's temporary residence there will place Applicant in a position of having to choose between his father's interests and that of the United States. I find it is unlikely that Applicant's relationship with his parents would place him in a position of having to choose between their interests and that of the United States. I find AG ¶ 8(a) applies to Applicant's relationship with his parents.

Applicant's siblings are refugees living in Turkey. They do not intend on returning to Syria, but hope to immigrate to the United States or Canada. There is no indication that any of the siblings have ties to the Syrian government or the Turkish government. Turkey has some human rights issues. Applicant has no ties to Turkey other than that it is the place his siblings now live. Applicant has minimal contact with his siblings, but due to his familial ties, it cannot be characterized as casual. I find that Applicant's ties to Turkey and his siblings' ties to Turkey are such that it is unlikely Applicant will be placed in a position of having to choose between his siblings and the interests of the United States. I find AG ¶ 8(a) applies to Applicant's relationship with his siblings.

Applicant's family fled Syria. Applicant has strong ties to the United States. All of his financial interests are in the United States. He has a child born and living in the United States. His mother now lives with him and he is hopeful his father will join him soon. His siblings are refugees hoping to immigrate to the United States or Canada. Applicant's loyalties in the United States are such that he can be expected to resolve any conflict of interest in its favor. I find 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(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's demeanor and candor during his hearing. I considered all of the character evidence. Applicant has no ties to any foreign government. His family has fled Syria and they intend to immigrate to the United States or Canada. I find Applicant has established his deep and committed relationship with the United States and has met his burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the foreign influence guideline.

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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge