



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



In the matter of:)
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)
)
Applicant for Security Clearance)

ISCR Case No. 12-11653

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has not mitigated the security concerns related to foreign influence. Accordingly, his request for a security clearance is denied.

Statement of the Case

On February 13, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline B (foreign influence) of the Adjudicative Guidelines (AG).¹ In his March 13, 2013 Answer to the SOR, Applicant admitted six of the ten allegations. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On June 27, 2013, DOHA issued a Notice of Hearing, and I convened the hearing on July 11, 2013. I admitted two Government exhibits (GE 1-2), as well as a demonstrative exhibit listing Applicant's relatives, marked as hearing exhibit (HE) I. Applicant did not offer documents. DOHA received the transcript on August 8, 2013.

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Procedural Ruling

I take administrative notice of facts related to Libya, included in five U.S. Government documents provided by Department Counsel. The facts are limited to matters of general knowledge, not subject to reasonable dispute, and are set out in the Findings of Fact.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant is 26 years old. His parents were born in Libya. The family moved to the United States after Applicant's father sought asylum during the regime of Colonel Muammar Qadhafi. Applicant was born in the United States and holds dual citizenship with Libya and the United States. He attended elementary school through college in the United States, completing a bachelor's degree in 2011. He is single and has no children. He began his current position with a defense contractor in 2011, and this is his first application for a security clearance. (GE 1; Tr. 22, 24-27)

When Applicant's parents separated in about 2000, his mother moved to Egypt, and Applicant resided there with her when he was approximately 14 years old. After about one year, he returned to the United States, and has lived here since then. He visited family in Libya in 2006, 2008, and 2009.² Applicant testified he has no intention to return as long as the Department of State advises against travel to Libya. (GE 1; Tr. 16-19, 25, 27-30, 48)

Applicant's mother and father are divorced. His mother is a dual U.S.-Libyan citizen and holds a Libyan passport. Other than the short period when she lived in Egypt in about 2000, she has lived in the United States since 1978. She worked as a teacher in the United States until about 2003, but is not currently employed outside the home. Applicant has daily contact with her. Applicant's mother is aware that he is seeking a security clearance. (GE 1; Tr. 25, 36-38, 40)

Applicant's father, a dual Libyan-U.S. citizen, remarried in 2002, lived in the United States for about two years, and then moved back to Libya. Applicant's stepmother holds a U.S. "green card." She is unemployed, and Applicant has contact with her about once per year. Applicant's father has three children, Applicant's half-brothers, who live in Libya and range in age from six to eight years old. Because of the age difference, he

² Applicant's parents obtained a Libyan passport for him, and he used it to avoid visa fees during three trips to Libya between 2007 and 2009. The passport was issued in 2006 and it expired in 2012. Applicant surrendered his expired Libyan passport to his facility security officer and it was destroyed on January 1, 2009. The SOR does not allege concerns under Guideline C, related to his foreign passport. (Attachment to Answer; GE 2; Tr. 18, 23, 27-29)

does not keep in touch with them. His father operates a computer repair and telecommunications business in Libya. He also maintains a computer repair business in the United States. Applicant has random contact with him from once per month to once every three months. They also have contact when Applicant's father comes to the United States once a year to check on his U.S. business. He last saw his father in March 2013. Applicant's father does not maintain a residence in the United States. (GE 2; Tr. 21-22, 31-36, 45-46)

Applicant's 66-year-old maternal grandmother is a citizen-resident of Libya. She is not employed. Applicant stays with her when he visits Libya. He last saw her during his 2009 trip. They have had no further contact because she has hearing problems and cannot use the telephone. (GE 2; Tr. 30, 46-48)

Applicant's four sisters are dual U.S.-Libyan citizens. His 28-year-old sister and her husband live in Saudi Arabia. She is unemployed, and her husband is an attorney for a U.S. company. Applicant is in touch with her about every other day. He believes she holds only a U.S. passport. His other three sisters reside in the United States. His oldest sister is 30 and teaches at a private school. Applicant believes that she holds only a U.S. passport. He speaks with her daily. His second youngest sister is 24 years old. She is studying law at a U.S. university, and is engaged to a U.S. citizen. Applicant has weekly contact with her. His youngest sister is a 17-year-old student. They have daily contact. Applicant's mother, all four of his sisters, and his oldest sister's husband, are aware that Applicant is seeking a security clearance. Applicant testified that his family members do not question him about his work. Applicant's sisters and mother live together. Applicant pays their utilities and some groceries. His financial support totals about \$700 per month. He also paid for his mother's plane ticket to Libya in 2009. (GE 1, 2; Tr. 19-21, 38-45, 63-65)

Applicant has five aunts and seven uncles who are Libyan citizens. His aunts, citizen-residents of Libya, have never worked outside the home. Applicant has contact with some of his aunts once per year. He sees all of his aunts and uncles when he visits Libya. His five maternal uncles and two paternal uncles range in age from the mid-thirties to late forties. One uncle is a Libyan citizen, but has lived in the United States since 1997. He was not employed when he lived in Libya.³ He now manages a pharmaceutical warehouse in the United States. Applicant sees him about twice per year, and calls about once per month. (GE 2; Tr. 19-21, 48-64, 70-71)

The remaining six uncles reside in Libya. One works in an oil refinery, and one owns a restaurant and grocery; they are his father's brothers and he only has in-person contact if he visits Libya. Of the maternal uncles who live in Libya, Applicant has once yearly contact by telephone with an uncle who is a banker. Applicant also has uncles who work for the Libyan government. One works in the Libyan department of communications; Applicant talks with him once per year and sees him during visits to

³ During his security interview, Applicant identified this uncle as working in Libya for the Libyan department of communications. He corrected this information when he reviewed the summary of his interview. (GE 2)

Libya. Applicant provided confusing testimony about another uncle, stating that he was a lieutenant, a police officer in the Libyan army, but also that his uncle is retired, and that he “has a desk job.” Applicant was unsure about whether this uncle’s current job is with the Libyan army. He last saw him during a 2009 visit to Libya, and has not spoken to him in two years. During his security interview, Applicant discussed another uncle who works for the Libyan department of the taxation. At the hearing, he testified that this is the same uncle he described in his Answer as working for the Libyan department of the treasury.⁴ He is in touch with this uncle by telephone about once every six months. Applicant testified that his extended family in Libya does not know about his application for a security clearance. (GE 2; Tr. 19-21, 48-64, 70-71)

Applicant has no foreign financial interests, property, or bank accounts, and has no expectation of inheriting property in Libya. (Tr. 64-65)

Applicant’s career manager/task lead at his current company testified on his behalf. He has held a security clearance for the past seven years. He has worked with Applicant daily for the past one-and-one-half years. He testified that Applicant has been given increased responsibility based on his job performance, and opined that Applicant is a trustworthy person. (Tr. 74-78)

Administrative Notice: Libya

Following a coup in 1969, Colonel Muammar Qadhafi became Libya’s de facto head of state. He brutally suppressed an uprising against him in 2011, and was killed during the conflict. Since the 2011 uprising, poorly trained militia groups, only loosely affiliated with the transitional government, operate checkpoints within cities and in some areas have replaced the police in maintaining security. Rival militias engage in clashes and revenge killings, and have detained foreigners, often for arbitrary or unclear reasons. The transitional government struggles to control the militias, but remains reliant on some of them for security.

Since the end of the Qadhafi regime, human rights abuses have continued including kidnapping; torture; life-threatening prison conditions; denial of fair trial; an ineffective judicial system; interference with privacy; limits on free speech, press, and religion; discrimination and abuse of women; and trafficking in persons.

On September 11, 2012, an extremist group attacked the U.S. consulate in Benghazi, and the U.S. ambassador and three other government personnel were killed. Recent terrorism alerts state that extremist groups continue to plan terrorist attacks against U.S. interests in the Middle East. The U.S. embassy in Tripoli, Libya’s capital,

⁴ In his security interview, SOR Answer, and hearing testimony, Applicant was unclear about which government departments employ his uncles. His SOR Answer notes an uncle who works for the Libyan department of the interior, but at the hearing, this uncle was first described as working for the interior department, and then for the taxation department, which Applicant testified is the same as the treasury department. (GE 2; Tr. 48-64, 70-71)

was included in the embassies closed in August 2013 during a worldwide travel alert regarding possible terrorist attacks.

In a March 2013 assessment, the Director of National Intelligence (DNI) noted that the transitional government in Libya, and other countries in the area, has offered opportunities for terrorist groups to attack U.S. interests. “Weakened or diminished counterterrorism capabilities—and other shortcomings in these countries—combined with anti-US grievances or triggering events, will sustain the threats to US interests throughout the region.”

The United States continues to have a strategic interest in a stable and prosperous Libya. It supports the creation of a democratic Libya which will be an active member of the international community. However, the security situation is unpredictable, and the State Department strongly advises U.S. citizens against all but essential travel to Tripoli, Benghazi, and other areas.

The Libyan government does not recognize dual citizenship, and requires Libyan citizens who hold other citizenship to enter and depart the country using a Libyan passport.

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline B.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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.

Under AG ¶ 7 of Guideline B, I have considered all the disqualifying conditions, especially the following:

(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 contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(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.

Family ties to residents or citizens of a foreign country do not automatically disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

of interest. The country in question must be considered.⁹ In Libya, rival militias engage in violent clashes; human rights abuses continue; privacy is disregarded; extremist groups continue to plan terrorist attacks; and the DNI warns of a sustained threat to U.S. interests. Applicant's ties to numerous family members who are either citizens or citizen-residents of Libya create a heightened risk of foreign exploitation and a potential conflict of interest. AG ¶¶ 7(a) and (b) apply.

I have considered the mitigating conditions under AG ¶ 8, especially the following:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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 interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has ties to immediate and extended family members who reside in Libya, including his father, step-mother, and his grandmother. He maintains contact with his numerous aunts and uncles, especially his maternal uncles, at least two of whom are employed by the Libyan government. Extremist groups and terrorists operate in Libya and continue to plan terrorist attacks against U.S. interests. The State Department warns U.S. citizens to avoid all but essential travel to Libya. Unstable militia groups have engaged in kidnappings and arbitrary detention of foreigners. Applicant also has close ties of affection and obligation to his mother and sisters, immediate family members who live in the United States but hold Libyan citizenship. Given these facts, I cannot confidently conclude that Applicant could not be placed in a position of having to choose between the interests of foreign individuals and the interests of the United States. AG ¶ 8 (a) does not apply.

Applicant receives some mitigation under AG ¶ 8(b). His U.S. birth, citizenship, education, and employment represent long-standing ties to the United States. However, on balance, these facts do not outweigh Applicant's close relationship to immediate

⁹ See ISCR Case No. 04-07766 at 3 (App. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

family members who hold Libyan citizenship, and his continuing relationship with his father and other relatives who are citizen-residents of Libya. Applicant's ties of obligation and affection to his mother and sisters are evident in his daily contact with them, and his regular and substantial financial support. Such ties would be influential if a conflict of interest arose. Applicant receives only partial mitigation under AG ¶ 8(b).

Applicant maintains relationships with his foreign family members. He stays in touch with one uncle, who resides in the United States and is a Libyan citizen, seeing him in person twice per year, and talking to him about monthly. As noted previously, Applicant has daily contact with his mother and two of his sisters, and also talks with his 24-year-old sister about once per week. These contacts cannot be construed as "casual and infrequent." In addition, his \$700 per month support of his mother and sisters, and his payment for his mother's trip to Libya, demonstrate his ties of affection and obligation. The Appeal Board has held that there is a rebuttable presumption that ties with immediate family are not casual.¹⁰ AG ¶ 8(c) does not apply to Applicant's mother and sisters.

Applicant also has immediate family members who are citizens and residents of Libya: his father and stepmother. Although Applicant's relationship with his stepmother does not appear to be close, Applicant is in touch with his father every one to three months, and sees him every year when he visits the United States to check on his business. He last saw his father about three months before the hearing. AG ¶ 8(c) does not apply to Applicant's father.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered

¹⁰ ISCR Case No. 00-0484 at 4-5 (App. Bd. Feb. 1, 2002).

the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Guideline B cases do not focus on an applicant's loyalty to the United States, and here, Applicant's loyalty is not in question. In evaluating the facts in light of the whole-person concept, I considered Applicant's U.S. ties: his many years in the United States, his education, and his economic ties through his employment. However, Applicant's ties to his family members who maintain Libyan citizenship and/or residence raise serious security concerns. Such ties could raise a conflict of interest, or place Applicant in a position of having to choose between the interests of these family members and the interests of the United States.

For all these reasons, I conclude Applicant has not mitigated the cited security concerns. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised. Such doubts must be resolved in favor of the Government.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B	AGAINST APPLICANT
Subparagraphs 1.a – 1.j	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge