



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



In the matter of:)	
)	
)	ISCR Case No. 13-00984
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him a security clearance to work in the defense industry. Applicant is a naturalized U.S. citizen originally from Syria. He has mitigated the foreign influence concern raised by his familial contacts and property interest in Syria. Clearance is granted.

Statement of the Case

On September 24, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing.² At the hearing convened on December 9, 2013, I admitted Government's Exhibits (GE) 1 through 3, and Applicant's Exhibits (AE) A through C, without objection. I received the transcript (Tr.) on December 17, 2013.

After the hearing, Department Counsel discovered that Applicant did not receive the most recent copy of the Directive when the SOR was issued. On January 17, 2013, Chief Department Counsel provided Applicant with a current copy of the Directive and gave Applicant 30 days to decide whether or not he wanted to submit additional evidence. Applicant received the letter on January 27, 2013 and chose not to submit any additional information. The record closed on March 13, 2014.³

Procedural Issues

Waiver of Notice Requirement

Applicant received less than 15 days written notice of the time and place of the hearing as required under Directive ¶ E.3.1.8. Applicant waived the notice requirement, electing to proceed with the hearing as scheduled.⁴

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Syria. Applicant did not object to the request, and it was granted. The written summary, along with its attachments, is appended to the record as Hearing Exhibit (HE) 1.⁵

Findings of Fact

Applicant, 47, is an executive-level employee of a federal contractor, specializing in information technology issues. He has worked for the same company since 1999. Applicant requires a security clearance for his work as a consultant to a directorate within the highest ranks of DOD leadership. According to the senior-level director with whom Applicant works most closely, Applicant worked with classified information in a secure office environment while he had an interim clearance prior to the issuance of the SOR. The director attested that Applicant completed the required security training, conducted himself within the rules of security, and complied with the directives

² The letter from the Chief Administrative Judge regarding the Applicant's rights and obligations in a DOHA proceeding is appended to the record as Appellate Exhibit (AP E) III.

³ The correspondence related to this issue is appended to the record as AP E I-II.

⁴ Tr. 5-6.

⁵ Tr. 18.

regarding the handing of classified information. The directorate supports Applicant's application for access to classified information.⁶

Applicant is originally from Syria, a country ruled by an authoritarian regime. Long designated a state-sponsor of terrorism by the U.S. Department of State, Syria has a history of providing safe haven, as well as political and other support, to a number of designated Palestinian terrorist groups. The country has also provided political and weapons support to Lebanese Hizballah and has allowed Iran to re-arm the terrorist organization. Applicant immigrated to the United States in 1985 to attend college at the encouragement of his father. He became a naturalized U.S. citizen in 1993. He returned to Syria in 1989 for his wedding, but did not return for 10 years, fearing conscription into the Syrian military. Applicant's wife and three children, ages 21, 19, and 17, are U.S. citizens by birth. In 1999, the Syrian government passed a law exempting certain Syrian expatriates from military service for a \$15,000 fee. Applicant paid the fee, which provided him the opportunity to visit his parents without fear of capture when entering the country.⁷

Applicant's mother, a naturalized U.S. citizen, lives in Syria as does Applicant's sister and his brother-in who are also Syrian citizens. Applicant's mother, 74, is a retired lawyer. Applicant's sister is a housewife and his brother-in-law is a university professor. Applicant's relatives are financially secure, own their own homes, and do not rely on Applicant for financial support. Between 2000 and 2006, Applicant and his family traveled to Syria every summer to visit his parents. In 2006, Applicant purchased and renovated a vacation home for his family, near his parents' home. He paid \$600,000 cash to purchase and renovate the home, which remained empty when Applicant and his family were not in the country. Applicant also maintained two bank accounts in Syria for the convenience of his family and to avoid entering the country with cash. Currently, the accounts contain only \$1,500, which is typical when Applicant and his family are not in Syria. After his father died in 2006, Applicant and his family traveled to Syria six times to visit his mother. Their last trip to Syria was in 2010.⁸

In 2010, the Syrian government's use of deadly force to quell anti-government protests resulted in a full-scale civil war with the armed Syrian opposition. According to its assessment of the political environment in Syria, the U.S. State Department believes that the security situation throughout Syria is likely to remain volatile and unpredictable for the foreseeable future, with some areas, especially in the contested population centers, experiencing substantially increased levels of violence. The State Department has issued a travel warning advising U.S. citizens against travel to Syria and strongly recommends that U.S. citizens remaining in Syria depart immediately. Applicant has affirmatively decided neither he nor his family will return to Syria for the foreseeable future. Applicant agrees with the State Department's assessment regarding the long-

⁶ Tr. 22; GE 1; AE A.

⁷ Tr. 21-23, 25, 38-40; GE 1; HE I.

⁸ Tr. 26-27, 32-33, 35-40, 51; GE 2-3; Answer.

term instability of Syria. Furthermore, Applicant's two oldest children, both young men, are eligible for conscription into the Syrian military even though they have never lived in Syria and only have citizenship by virtue of Applicant's birth.⁹

Applicant considers the vacation home, now worth \$100,000, a loss. Although the home has remained unscathed by the civil war, Applicant cannot sell the home because the real estate market has effectively collapsed. Applicant has discussed his decision not to return to Syria with his mother and she supports his decision. Even though Applicant would like his mother to leave Syria and he has the means to evacuate her, she will not leave until Applicant's sister and brother-in-law are able to immigrate to the United States. Applicant's sister is the only one of Applicant's three siblings to remain in Syria. Applicant's brother is a naturalized U.S. citizen. His other sister is a citizen of Syria who has resided in Kuwait for more than 10 years with her husband, who is also a Syrian citizen.¹⁰

In the 29 years Applicant has resided in the United States, he has accumulated significant financial resources. In addition to his annual compensation, which is in the mid-six figure range, Applicant has a net worth of over \$3 million, including his home, retirement savings, and other real estate investments. Applicant's net worth does not include the vacation home in Syria.¹¹

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 to be 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, administrative judges apply the guidelines 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

⁹ Tr. 24-26, 51, 57; HE I.

¹⁰ Tr. 28-29, 31, 37, 41-42, 54-57; Answer.

¹¹ Tr. 42-47, 49-51; GE 2-3.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 EO 10865 provides that adverse 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

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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.”¹² The record shows that Applicant has familial ties as well as property interests in Syria, which is a country immersed in a civil war, and is also considered a state-sponsor of terrorism by the U.S. Government. Applicant’s contacts and property interests create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.¹³ These relationships also have the potential to create a conflict of interest between an applicant’s obligation to protect sensitive information or technology and his desire to help a foreign person.¹⁴ No such concerns exist with Applicant’s relationship with his sister and brother-in-law who are Syrian citizens living in Kuwait.

While Applicant’s financial interests in Syria are significant, they are not a source of vulnerability, exploitation, or coercion. Applicant purchased a vacation home and maintained two bank accounts in Syria for the enjoyment and comfort of his family

¹² AG ¶ 6.

¹³ See AG ¶¶ 7(a), (e).

¹⁴ See AG ¶ 7(b).

during their annual visits. Applicant does not receive income from the property. Applicant's testimony that he considers the home a loss is credible given his finances. The money Applicant invested in the home is a sunk cost and the bank accounts have nominal balances. Neither asset is material to Applicant's current financial portfolio, which contains at least \$3 million in U.S.-based assets. Taking these factors into consideration, it is unlikely that the property or the two bank accounts could result in a conflict of interest or be used as a source of coercion against Applicant.¹⁵

The gravamen of the security concern lies in Applicant's relationships with his mother, sister, and brother-in-law who remain in Syria. These relationships cannot be dismissed as casual. Also, it is impossible to find that Applicant's relatives will remain untouched by the political unrest around them even though they are financially secure and are not dependent on the Syrian government. However, an applicant is not required to sever all contact with his foreign relatives. Instead, he must provide strong evidence that despite these relationships, he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflicts in favor of U.S. interests. Applicant has done so.

Applicant has spent his entire adult life in the United States. He is rooted to the United States by his wife and three children. In addition, he has worked hard to build a successful career, reaching high levels of corporate success. Applicant understands the security risks associated with his ties to his relatives in Syria. He has thoughtfully weighed his desire to visit his mother and sister regularly against the potential hazards to himself and his family of continuing to do so. Applicant articulated the greatest of his concerns as being his family's safety and the possibility of his sons being conscripted into the Syrian military. After weighing these factors, Applicant has made the pragmatic decision not to return to Syria. For the second time since immigrating to the United States, Applicant has initiated a self-imposed exile from his family members in Syria. This decision comes at a great personal cost. Applicant and his mother accept the possibility that they may not see each other again if she chooses to remain in Syria. Based on the record, I am confident that Applicant will resolve any conflict of interest in favor of the United States.¹⁶

While Applicant is connected to his relatives in Syria, the nexus of Applicant's primary concerns are located in the United States. In reaching this decision, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant has demonstrated that he does not have divided loyalties between the United States and Syria. Based on the evidence, I conclude that Applicant has mitigated the foreign influence concern.

¹⁵ See AG ¶ 8(f).

¹⁶ See AG ¶ 8(b).

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

Nichole L. Noel
Administrative Judge