KEYWORD: Foreign Influence

DIGEST: Applicant is a 47-year-old employee working for a defense contractor. Following college, she met and married a student from Yemen. After briefly residing in Yemen, the couple returned to the United States and the husband became a naturalized citizen. Applicant has six in-laws and a nephew who are residents and citizens of Yemen. Although she has no relationship with these in-laws owing to language differences and distance, her husband has maintained contact with them. Applicant failed to mitigate the security concerns raised by the presence of these foreign relatives abroad. Clearance is denied.

CASENO: 04-04004.h1

DATE: 12/30/2005

DATE: December 30, 2005

In Re:

SSN: -----------

Applicant for Security Clearance

ISCR Case No. 04-04004

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Sabrina E. Redd, Esq., Department Counsel

FOR APPLICANT

Mohamed Kadasi

SYNOPSIS

Applicant is a 47-year-old employee working for a defense contractor. Following college, she met and married a student from Yemen. After briefly residing in Yemen, the couple returned to the United States and the husband became a naturalized citizen. Applicant has six in-laws and a nephew who are residents and citizens of Yemen. Although she has no relationship with these in-laws owing to language differences and distance, her husband has maintained contact with them. Applicant failed to mitigate the security concerns raised by the presence of these foreign relatives abroad. Clearance is denied.

STATEMENT OF THE CASE

On March 31, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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). That SOR detailed why, pursuant to Guideline B (Foreign Influence), it 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. In response, by letter of April 16, 2004, Applicant admitted the four allegations contained in the SOR and requested a hearing before an administrative judge. I received the case file on July 7, 2005. On July 26, 2005, a Notice of Hearing was issued setting the hearing for August 9, 2005.

The Government introduced six exhibits, marked Government Exhibit(s) 1-6 and admitted without objection. Applicant, presented two witnesses: Applicant's husband, who helped represent his wife during the proceeding, and a co-worker. I received the transcript in the matter on August 18, 2005.

FINDINGS OF FACT

Applicant has admitted to the four allegations set forth in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old female who is currently employed as the Vice President of Business Operations for a government contractor. She has served in that capacity since August 2001. Applicant received her Bachelor of Science degree in Accounting in 1982 and has worked in the area of finance for over 25 years.

Born in Yemen in 1957, Applicant's husband was raised and educated in that country. He commenced his undergraduate studies in South America, then came to the United States in 1981 to finish his Bachelor's degree. There he met Applicant, who was also a student at the same university. He completed his degree in 1983 and returned to Yemen in January 1984 as the couple dated long distance. Applicant visited him briefly in May 1984 and they married in Yemen on July 19, 1984.[(1)]

While in Yemen, Applicant's husband completed his year of mandatory service in the engineers corp, then went on to work for the Yemen inistry of Oil.

During Applicant's time in Yemen, from her marriage in 1984 until they left in 1987, she worked for a U.S. oil company's subsidiary in Yemen, then for an American university's English language institute under a U.S. government contract administered through the Agency for International Development. Throughout this period, contact with Applicant's in-laws was limited to visits once or twice a year for major holidays.[(2)] Applicant's contact was even further minimalized by the fact she speaks no Yemeni and his family does not speak English.[(3)]

The couple returned to the U.S. in 1987 so Applicant's husband could go to graduate school. In 1989, they had a son. Then, on March 16, 1990, Applicant's husband received his certificate of naturalization. Today, he is a civil engineer living with Applicant and their son.

Applicant has in-laws in Yemen. Her father-in-law was a teacher and a judge employed by the Yemeni government,[(4)] but he passed away in the summer of 2005. His wife, Applicant's mother-in-law, died approximately in 1961.[(5)] Still living in Yemen as citizens and residents are a sister-in-law, five brothers-in-law, and a nephew. Her sister-in-law is a homemaker and farmer. She lives on a farm without a phone. The only contact Applicant or her husband has had with her has been through their rare personal visits. Two of her brothers-in-law are also rural residents and equally difficult to reach; the remaining three brothers-in-law live in cities. With the exception of one brother-in-law who works as a home builder, the rest are teachers working for the state. Only one of them speaks any English, although with a limited ability to conduct conversation.[(6)] Each brother-in-law heads a large family with many children, ranging from five to nine each. The identity of the nephew at issue in the SOR is indeterminable.[(7)]

The family in Yemen is apolitical. Following a tone set by the late family patriarch, the family does not discuss or get involved in politics. No family member has been persecuted, arrested by the government, or been a victim of crime. Moreover, none of the Yemen-based family knows anything of Applicant except that she is an American working mother, a fact of sufficient novelty to preclude further inquiry into her actual profession.

Despite many years of marriage, Applicant has established no bonds with her in-laws and maintains no written or telephonic contact with them. She lacks the commonality of language to communicate or cultivate relationships, and that lacking is compounded by geographic distance. In contrast, her husband has telephonic or e-mail contact with one or more of his city dwelling, telephone possessing brothers five to eight times a year. All calls are initiated by Applicant's husband because his relatives cannot call out to the U.S.[(8)] Much of this contact had to do with his late father's declining health and other such news. As noted, Applicant's husband also exchanged at least one e-mail with a nephew concerning the ailing patriarch of the family. None of the family in Yemen has visited the U.S., but the youngest brother-in-law attempted to emigrate to the U.S. for education and work. He has also encouraged other relatives to seek emigration via the embassy.[(9)]

Applicant and her husband have been to Yemen three times since returning to the U.S. in 1987, the last trip having been in 2000. Following the events of September 11, 2001, Applicant and her husband decided to no longer travel to Yemen because "of all things going on."[(10)] They recognize the existence of terrorists and extremists, and the possible harm that could come to them as foreigners.[(11)] Indeed, they declined returning to Yemen during the husband's father's illness because of these concerns. It is Applicant's husband's hope that the situation in Yemen will some day be safe enough for he and his family to again visit. Until the day arrives that it is safe for U.S. citizens to travel in that part of the world, neither he nor Applicant has any intention of returning.

Neither Applicant nor her husband own property in Yemen, stand to inherit property from family in Yemen, hold any foreign investments, possess any foreign contacts outside the United States, or possess foreign passports.[(12)] Any financial help sent back to a relative in Yemen has been minimal, consisting mostly of money sent to a brother to help with their late father's up-keep. In their father's final years, that sum amounted to about $1,200 to $1,500 a year. The couple has returned to Yemen a total of "two to three times"[(13)] since leaving that country in 1987. Their last trip was in 2000.[(14)]

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified

information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an administrative judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the administrative judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person -- whether it is good or bad, present or past -- should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 individuals age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B - Foreign Influence. 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.[(15)]

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance[(16)] and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[(17)] Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegation set forth in the SOR:

With respect to Guideline B (Foreign Influence), the Government has established its case. Applicant admits that, by virtue of her marriage to her husband, she has parents-in-law, five brothers-in-law, one sister-in-law, and a nephew who are citizens and residents of Yemen.[(18)] The citizenship and current residence of these in-laws raise both a security concern and Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 ([*a*]*n 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.*) Moreover, by virtue of her marriage, these foreign in-laws pose a security risk under FI DC E2.A2.1.2.2 ([*s*]*haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*).

It is worth noting at the start that owing to the difference in languages and the distance in geography, Applicant's personal relationship with her in-laws is negligible and far from intimate. Any ties of affection or obligation seem to be lost, as it were, in translation. The Appeal Board, however, has ruled that in evaluating an applicant's foreign associations, it is appropriate to consider the significance of the applicant's spouse's ties to foreign countries.[(19)] Consequentially, there is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members[(20)]. Therefore, this disqualifying condition does apply.[(21)]

When, as here, the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. Here, Applicant has described her in-laws as everyday folk, and so they seem. Indeed, her sister-in-law is a homemaker and farmer living in a rural district, and two of her brothers-in-law live in a rural area. Regardless of where and how they live, however, Applicant has noted that four of the brothers-in-law are school teachers and, therefore, employees of the state. As such, these family members qualify as agents of the state. Moreover, like their late father, a former government employee, it is likely that their retirement will be based at least in part on a government pension. Their economic dependence, like their geographic location, places them in a precarious position should pressure be brought to bear on them in the future. Given these facts, Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 ([*a*] *determination that the family member(s), (spouse, father, mother, sons, daughters, brothers,*

sons), 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 Untied States) does not apply.

The relationship between Applicant and her husband with these in-laws arises from marriage. It is not the result of any business related function they perform. Therefore, FI MC E2.A2.1.3.2 ([*c*]*ontact with foreign citizens is the result of official United States government business*). Furthermore, FI MC E2.A2.1.3.4 ([*t*]*he individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign power, as required*) does not apply as the type of situation contemplated has never arisen or, at least, has never been mentioned.[(22)]

Applicant demonstrated that her personal contact with her in-laws is negligible, at best. Because of the language barrier, they do not interact by telephone, email, or letter. During their infrequent personal visits, numbering two to three times since 1987, her interaction has been limited to the exchange of simple, civil greetings like "Hello," and the occasional exchange with a brother-in-law who has some limited and elementary knowledge of basic English. Other than these opportunities, Applicant's time with her in-laws is spent in a linguistic and cultural purdah, isolated and neglected among people who are technically extended family members, but who, in reality, are nearly strangers. Such is not the case regarding the relationship between Applicant's husband and his siblings. Contact by telephone is initiated by Applicant's husband to one of his brothers five to eight times a year for the purposes of catching up on family news. Moreover, although only one e-mail is mentioned -- the one exchanged between Applicant's husband and one of his brothers' sons -- Applicant has not shown that e-mail, as a form of correspondence, has been limited to this one exchange; this opens the realm of possibility that some additional contact is maintained electronically. Further, the three visits back to Yemen to see his family since Applicant's husband and Applicant left the country in 1987[(23)] indicates that there is a genuine bond of family among those

involved.[(24)] As a result of these factors, FI MC E2.A2.1.3.3 ([*c*]*ontact and correspondence with foreign citizens are casual and infrequent*) does not apply to Applicant's siblings-in-law.[(25)]

The same cannot be said for Applicant's relationship with her nephew. Neither Applicant nor her husband can even be sure which nephew the SOR contemplates when making the allegation found at subparagraph 1.c. Left without proper notice by the SOR, the couple assumed it was one nephew in particular solely because they had some contact with that one nephew, an e-mail up-date on the Yemeni family's patriarch's health. They did not recall this boy's name. Indeed, they cannot recall any of the names of the male half of his siblings' issue -- a total number that apparently ranges from 25 to 45 children. Given these circumstances, I find that FI MC E2.A2.1.3.3 applies with regard to the nephew and find subparagraph 1.c of the SOR in Applicant's favor.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I have also considered the extensive materials submitted by the Government regarding the threat posed by extremists based in Yemen, a factor equally well considered and articulated by both Applicant and her husband. Although there is no basis in the record to question Applicant's character or integrity, the DOHA Appeal Board has determined that even good people can pose security risks.[(26)]

Here, Applicant failed to carry her burden with regard to the pivotal charge in the SOR concerning her siblings-in-law

and their current relationship. As a result, I find that Applicant has failed to mitigate the disqualifying condition, FI DC E2.A2.1.2.1, raised by the Government.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

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

Arthur E. Marshall, Jr

Administrative Judge

1. The bride's family did not attend. Although the couple was married in a town other than the one in which the groom's family hailed, some of his family attended the ceremony. Transcript (Tr.) 17-18.

2. Tr. 21.

3. Tr. 10 ("I do not speak the language, and so my contact with them really is just limited to 'Hello, how are you' and the rest of it is just smiling and we don't communicate."). *See also* Applicant's Response to the SOR, dated April 16, 2005.

4. Tr. 27.

5. Tr. 10 and 27, respectively.

6. Tr. 30.

7. Applicant's husband has five brothers, each of whom has five to eight or nine children. Tr. 38. He does not know any of the names of his nieces or nephews. Tr. 39. Applicant's husband assumes the SOR refers to one particular nephew because there was one with whom he had some interaction, as opposed to the others (*i.e.,* as the family prepared for the death of his father, he received an e-mail from one nephew giving him an up-date on the elder man's condition). Tr. 39.

8. Tr. 39. (This number refers to calls to family members as a collective; not per brother).

9. Tr. 35-36.

10. Tr. 10.

11. Tr. 23-26 and 58, respectively.

12. Applicant's husband relinquished his Yemeni passport when he received his U.S. citizenship and passport. Tr. 22.

13. Tr. 22.

14. Tr. 10.

15. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

16. [0] *Dep't of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

17. [0] *Id.*, at 531.

18. Applicant's mother-in-law died in the early 1960s. Her father-in-law passed away this past summer, after the issuance of the SOR. Inasmuch as her parents-in-law are both deceased and, therefore, no longer residents and citizens

of Yemen, I find subparagraph 1.a in Applicant's favor.

19. ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002).

20. ISCR Case No. 01-26893, 2002 DOHA LEXIS 505 at 8 (App. Bd. Feb. 20, 2002)

21. It is significant to note that the SOR, subparagraph 1.a refers to the existence of parents-in-law. As described,

above, the mother-in-law died in 1961, and the father-in-law passed away since the issuance of the SOR. Consequentially, 1.a is found for Applicant inasmuch as neither parent-in-law is currently a citizen or resident of Yemen. Moreover, the SOR points to one nephew who is a citizen and resident of Yemen, with no further indication as to which nephew it refers. Such a lack of specificity gives Applicant no notice as to how to address the charge, especially when the evidence indicates he has a great number of nephews. Ironically, however, his knowledge of these nephews does not even extend to knowing any of their names or recollecting any contact except the receipt of one e-mail regarding his father's health. In light of these circumstances, I find in favor of the Applicant with regard to 1.c.

22. Tr. 24 (Applicant's husband noted that they were not approached in any manner during their 2000 visit).

23. The SOR notes the family's 2000 visit to Yemen as a free-standing allegation at subparagraph 1.d. While

such a trip does have some bearing in assessing the bond between Applicant and her husband with the Yemeni relatives, it does not, by itself, pose a disqualifying condition. I therefore find subparagraph 1.d of the SOR in Applicant's favor.

24. Indeed, such a bond is further shown in his encouragement and sponsorship of his younger brother to come

to the United States, his encouragement to other relatives to do the same, the sending of money for his father's up-keep, and his hope to someday revisit Yemen.

25. The testimony seems to indicate that the vast majority of contact with the family in Yemen was so Applicant's

husband's could keep up with his aging father. There is a chance that now, after his passing, the contact between Applicant's husband and his siblings will demonstrate itself actually to be casual and infrequent. It is premature, however, to make that conclusion now, based solely on conjecture.

26. ISCR Case No. 01-26893 (October 16, 2002), at p. 8