

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Given his service in the U.S. Army, his stronger ties of affection and obligation to his family in the U.S., and his actions in support of the war against terrorism, Applicant has mitigated the security concerns raised by his family ties to the Republic of Yemen under Guideline B. He also mitigated security concerns under Guideline E. Clearance is granted.

CASENO: 04-10430.h1

DATE: 06/12/2006

DATE: June 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10430

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Given his service in the U.S. Army, his stronger ties of affection and obligation to his family in the U.S., and his actions in support of the war against terrorism, Applicant has mitigated the security concerns raised by his family ties to the Republic of Yemen under Guideline B. He also mitigated security concerns under Guideline E. Clearance is granted.

STATEMENT OF THE CASE

On July 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information. ⁽¹⁾

Applicant answered the SOR on July 27, 2005, and requested a hearing. The case was assigned to me on October 17, 2005. On November 3, 2005, I convened a hearing at which the government presented 11 exhibits, marked GE 1-11, to support the SOR. ⁽²⁾ Applicant testified on his own behalf, and presented the testimony of one witness and 22 exhibits that were admitted and marked AE A-V. DOHA received the transcript (Tr.) on December 1, 2005.

PROCEDURAL MATTER

Based on the government's motion, and with Applicant's consent, the SOR was amended by deleting the words and number " under Article 15 of" from the second line of subparagraph 2.a.(1). The amendment was granted to conform the

SOR to the evidence submitted.⁽³⁾

Applicant's notice of hearing was issued on October 19, 2005, and the hearing was scheduled for November 3, 2005, with Applicant's consent. At the hearing, Applicant knowingly and willingly waived the 15-day notice, and affirmatively stated he had sufficient time to prepare for the hearing and was ready to proceed.⁽⁴⁾

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted, with explanations, SOR allegations 1.a - 1.d. He admitted the underlying facts alleged in subparagraph 2.a.(1), but claimed his failure to disclose the information on his 2003 security clearance application (SF 86) was a mistake, and that he did not intent to falsify the document or mislead the government. I considered SOR allegations 2.a.(1) denied. Applicant's admissions are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's testimony, and the evidence, I make the following additional findings of fact:

Applicant is a 54-year-old married man. In April 2003, he was hired as a linguist/translator by a company doing business with the Department of Defense (DOD) and requires access to classified information to perform his duties. Since he was hired, Applicant has been working with U.S. military forces in Iraq, translating captured documents for intelligence exploitation purposes. He also conducted negotiations with Iraqi nationals on behalf of U.S. personnel and recruited and trained personnel for the new Iraqi Army. Applicant worked directly with U.S. military personnel, and his superb work ethic and technical proficiency earned him the respect and gratitude of his supervisors and DOD customers.

Applicant's nine character references described him as a person with the highest integrity, honesty, and loyalty. He was complimented for his selfless dedication, for going beyond the call of duty to accomplish the mission, and for his devoted service in the war against terrorism. As a result of his outstanding performance and attention to detail, Applicant was assigned to train other linguists and to perform recruiting duties among the Iraqi population. His performance exceeded the expectation of all his customers, and all of his character references stated they would welcome the opportunity to work with him again.⁽⁵⁾ Applicant held an interim access to classified information from 2003 to 2005. There is no evidence that Applicant has mishandled or risked the compromise of classified information.

Applicant was born in the Republic of Yemen. He received the equivalent of a high school diploma and attended two years at a vocational school. In 1972, at age 20, he was selected by the then-Socialist South Yemen government to attend a teacher's education program in Libya under a scholarship offered by Libya. After graduation, Applicant defected to the U.S. When Applicant finished his education in Libya, he followed his father to the U.S. He believed he

had no future in Yemen because he did not belong to the Socialist Party or the Youth Party.

In 1974, Applicant enlisted in the U.S. Army. He testified he joined the Army because it was his opportunity to serve the country that gave him shelter. In 1976, while serving in Germany, Applicant was convicted at a general court-martial for aggravated assault and possession of a prohibited weapon.⁽⁶⁾ He served 77 days in jail, and was returned to duty. In 1977, Applicant was honorably discharged. He attained the rank of specialist (E-4) before his discharge. While in the service, Applicant obtained resident alien status.

From 1980 to 1995, Applicant worked for the United Nations Children's Fund (UNICEF) in Yemen. He rented an apartment while living in Yemen and sold all his possessions when he left to return to the U.S. Applicant explained that although he was working in Yemen, his intent was always to return to his home in the U.S. To continue his naturalization application process, he and his wife returned to the U.S. at least once every year. Applicant became a naturalized U.S. citizen in 1990. After returning to the U.S., Applicant worked one year as a carpenter. From 1997 to 2002, he worked as the operations manager for a company that retails office equipment. In 2002, he was wrongfully terminated from his job and was unemployed for approximately one year until he was hired by his current employer.

Applicant's parents were born in Yemen. His father has been a resident of the U.S. since 1970. Before coming to the U.S., his father worked for an oil company in Saudi Arabia for approximately 20 years. He came to the U.S. to escape from the then-Socialist Yemeni government after it confiscated his property. Applicant testified his contact with his father was limited to occasional phone calls, usually during the Muslim holidays.

His mother is a citizen and resident of Yemen. She is 69 years old, lives in a mountain village, and farms the land. She has always been a homemaker and never worked for the Yemeni government. Applicant has two siblings that are citizens and residents of Yemen. His 39-year-old brother is an electrician by trade, who owns his own company, and has never worked for the Yemeni government. He visited Applicant in the U.S. around 1999 when Applicant's mother was staying with him. Applicant's sister is 38 years old, divorced, and works as a translator for a group of doctors.

Applicant testified he has little contact with his brother. He usually talks to his sister on Muslim holidays. Because Applicant's mother lives in the mountains, he only has contact with his mother approximately three times a year when she comes to the city to visit his sister. On those occasions, his sister calls him, and he talks to all his relatives at his sister's home. Applicant provided financial assistance to his mother on an "as needed" basis. Applicant testified he has no contact with the rest of his extended family or friends in Yemen.

Applicant had two other brothers that are now deceased. One of them was a resident alien in the U.S., serving in the Army Reserve. He was killed in a traffic accident in 1978. The other brother was killed in Yemen. Applicant does not know what happened to him, but speculated he was involved in some type of political struggle and was killed by Yemeni government forces. According to the Applicant, none of his siblings or family members ever worked for the

Yemeni government, terrorist organizations, or for any organization inimical to the U.S.

Applicant traveled to Yemen in 1999 to visit his mother, siblings, and other relatives. A flood damaged his mother's home and he went back for approximately 30 days to help her with the repairs. Applicant then brought his mother to the U.S. to live with him in for a short period of time. He testified he tried to convince her to move in with him permanently, but she refused.

Applicant married his current wife in 1982. She was born in Bosnia-Herzegovina and became a naturalized U.S. citizen in October 1995. Applicant's parents-in-law, as well as the rest of his wife's family, are citizens and residents of Bosnia-Herzegovina. Applicant and his wife have two children, a 23-year-old son (S), and a 21-year-old daughter (D) that were born in Austria and are now naturalized American citizens. Both were educated in the U.S., and are attending college. "S" completed two years of college in the U.S. and is now participating in a one year student exchange program at a French university. "D" has a full scholarship to a prestigious English university, but she is taking time off from college to work. As of the day of the hearing, she was working as a translator/linguist for the same company her father works for. She has been granted access to classified information.

"D" testified at her father's hearing. She appears to be a very bright, poised, and articulate "all American girl" who is anxious to tackle the world. She feels she was not able to grow up close to her father because he was always busy working. "D" recognized, however, the sacrifices her father has made to be a good provider, and the sacrifices he is now making in the war against terrorism. She seemed proud of her father's accomplishments and his work with U.S. forces fighting terrorism. She and her father submitted their SF 86s at the same time. "D" testified she remembered quite clearly his instructions to "put down everything they asked for because they were Americans and had nothing to hide." She confirmed her father has contact with his Yemeni relatives approximately three times a year. She and her brother have no contact with their Yemeni relatives, except through her father.

Applicant credibly testified he has no intentions of returning to Yemen to live. He was adamant about the fact the he and his family (wife and children) are Americans, and that the U.S. is their home. As evidence of his intent he pointed out that he owns two houses in the U.S. and his bank accounts and other investments are in the U.S. He testified he owns no property, bank accounts, or any interest or investments in Yemen. When asked about his relatives in Yemen, Applicant responded that they have their own families to take care of, and he has his family in the U.S.

The Republic of Yemen was established in 1990. It is a developing country with an active bicameral legislature. It is considered an important partner of the U.S. in the war against terrorism and has cooperated with U.S. law enforcement agencies taking action against al-Qaida operatives and other extremists. Notwithstanding, terrorist organizations such as the Islamic Resistance Movement (HAMAS) and the Palestine Islamic Jihad have offices in Yemen and are recognized as legal organizations by the Yemeni government. (7) Yemen recently released detainees with ties to al-Qaida and other extremist groups without consulting with the U.S., claiming the detainees had renounced violence. Yemen's human rights record is considered poor. Government agencies engage in serious human rights violations including arbitrary arrests, detentions without charges, and torture. It also interferes with its people's privacy rights, arbitrarily searching homes,

(8)

reading correspondence, and monitoring conversations.

In his April 2003 SF 86, Applicant answered "No" to question 23, which asked whether he had ever been charged with or convicted of any felony offenses. He failed to disclose that in 1976 he was convicted at a court-martial of aggravated assault and possession of a prohibited weapon (felonies).⁽⁹⁾ Applicant credibly testified he did not disclose his 1976 conviction because he was told to go back only seven years when answering the SF 86. He reviewed and resubmitted his SF 86 at least three times after follow-up interviews with government investigators. The last time he reviewed the SF 86, he was asked to report information within the last 10 years, and he complied with that request. At the hearing, Applicant recognized that he made the mistake of disregarding the instructions for question 23, and instead followed the instructions of his employer. He claimed, however, he had no intention to mislead or falsify his answers.

Applicant testified he had nothing to hide, because even though he was convicted, he returned to his unit after serving his sentence and honorably served the remainder of his service obligation. He further indicated that the information concerning his court-martial conviction was reflected on his DD 214,⁽¹⁰⁾ and he provided a copy of it when he submitted his SF 86. He also argued he knew the government would have easy access to all the information in his military records. In light of Applicant's demeanor, testimony, and available evidence, I find Applicant's omission was not deliberate or made with the intent to mislead.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.⁽¹¹⁾ Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence) and Guideline E (Personal Conduct), are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to

grant or continue an applicant's eligibility for access to classified information. ⁽¹²⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish, by substantial evidence, ⁽¹³⁾ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. ⁽¹⁴⁾ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. ⁽¹⁵⁾

CONCLUSIONS

Under Guideline B (Foreign Influence), a security concern exists when an individual's immediate family and other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries are also relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

In every security clearance case an applicant's ties or connections to any foreign country require careful examination. ⁽¹⁶⁾ Notwithstanding, the mere possession of family ties with persons in a foreign country is not, as a matter of law, disqualifying. The language of the foreign influence guideline does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country. ⁽¹⁷⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern or risk. ⁽¹⁸⁾

The government established a prima facie case under Guideline B by showing that Applicant has close ties of affection or obligation with his mother and siblings, who are citizens and residents of Yemen. ⁽¹⁹⁾ The strength of his relationship is demonstrated, to a certain extent, by his contacts with his family, the financial support provided, and his trips to Yemen. The fact that Applicant has close ties of affection or obligation to persons who are either citizens or residents of Yemen is sufficient to raise security concerns concerning the possibility of Applicant's vulnerability to coercion, exploitation, or pressure by a foreign country. ⁽²⁰⁾ Foreign Influence Disqualifying Condition (DC) 1: *an 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, applies.

In deciding whether Applicant's family members are in a position to be exploited, I considered Yemen's form of government. (21) Yemen and the U.S. seem to have a friendly, cooperative relationship as demonstrated by their diplomatic status, the foreign assistance provided to Yemen, and the assistance/support provided by Yemen to the U.S. in the war against terrorism. Further, there is no evidence the government of Yemen has engaged in espionage against the U.S. To a certain extent, the security concerns raised by Yemen are less than those raised by a country hostile to the U.S. Nevertheless, the concerns still exist, because even friendly countries have interests that are contrary to the national interest of the U.S. There are, however, serious concerns raised by Yemen's official recognition of known terrorist organizations within its borders. Additionally, Yemen's human rights record is poor with little or no action by its government to prosecute or prevent its organizations from violating the human rights of its citizens.

Considering the totality of the circumstances in Applicant's case, I find Applicant's mother and siblings are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his relatives in Yemen and loyalty to the U.S. In reaching this conclusion I considered the following factors: (1) Applicant's family members did not work for the Yemeni government and they live common, ordinary lives; (2) They are not involved in political organizations; (3) They do not dependent on Applicant's financial assistance; (4) They have infrequent contacts with Applicant; and (5) There has been no attempt at exploitation in the past. As such, it is not likely that their behavior would raise the interest of the Yemeni government in their activities or that of their relatives. Mitigating Condition (MC) 1: *a determination that the immediate family members in questions are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the U.S.* (22) applies.

Applicant left his country and his Yemeni relatives in 1972 to come to the U.S. He showed his gratitude to his new country and earned resident alien status by serving honorably in the Army for three years. His employment at UNICEF appears to be the result of Applicant taking advantage of a great economic and professional opportunity, and not because of his desire to go back to live in Yemen. After working 15 years for UNICEF in Yemen, Applicant had the opportunity to stay in Yemen and reestablish himself in that country. He and his wife elected to come back to the U.S. every year in order to maintain their resident alien status and meet their naturalization requirements. After completing his tour with UNICEF, Applicant returned to the U.S. and integrated himself into our society. His children and wife, although born in foreign countries are now naturalized U.S. citizens. Applicant's daughter's testimony and demeanor at the hearing showed she was raised following American (Western) customs. She was dressed and behaved as a typical college student and displayed a confident and outspoken personality. Applicant seemed very proud of her accomplishments in school. Her personality and demeanor leads me to believe she was not raised in the fundamentalist/extremist environment usually associated with people and organizations with interests inimical to the U.S.

Both Applicant and his daughter work as translator/interpreters for DOD personnel in the war against terrorism and seem very proud of their contributions. Applicant's performance in Iraq since 2003 has been characterized as outstanding. His character references included military personnel whose lives, to some extent, depended on Applicant's loyalty and trustworthiness. They had the opportunity to observe Applicant on a daily basis, dealing both with Iraqis and

on behalf of U.S. forces. They, without exception, complimented Applicant's performance and stated they would welcome Applicant's assistance in the future. In my view, those serving beside the Applicant in a field environment are unequally qualified to judge Applicant's loyalties. Accordingly, their recommendations deserve serious consideration.

Applicant's actions demonstrate he is not afraid of the possible adverse consequences to his family in Yemen should enemies of the U.S. find out what he (and his daughter) currently does for a living. Although I cannot rule out the possibility that his Yemeni family may be in a position to be exploited by a foreign power, I do not believe that is likely to happen. Even if it were, Applicant's actions already demonstrate that his strongest ties of affection and obligation are to his wife and children in the U.S. and it is not likely Applicant would be forced to compromise U.S. interests because of his family in Yemen.

Under Guideline E, personal conduct is always a security concern because it asks the ultimate question - whether a person's past conduct instills confidence the person can be trusted to properly safeguard classified information. An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information. [\(23\)](#)

The government established that Applicant failed to disclose his 1976 charges and conviction. Notwithstanding, I do not believe his omissions were deliberate or made with the intent to falsify or mislead the government. Applicant credibly testified that he was instructed to report only charges or offenses within the last seven to ten years. It is not likely Applicant would have had any motive to hide the offenses in light of the fact that they happened 30 years ago, he was returned to his unit after serving his sentence, and he ultimately received an honorable discharge. The conviction was reflected (as days lost) on the Applicant's DD 214, and he knew the government would have immediate access to his military records. Guideline E is decided for the Applicant.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. Considering all relevant and material facts and circumstances present in this case, including Applicant's testimony and demeanor, the whole person concept, and the adjudicative factors listed in the Directive, I find Applicant has mitigated the security concerns.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B) FOR APPLICANT

Subparagraphs 1.a -1.d For Applicant

Paragraph 2, Personal Conduct (Guideline E) FOR APPLICANT

Subparagraph 2.a(1) For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. I marked the government's exhibit list as GE 1 for Identification. GE 6-11 were considered only for administrative notice purposes. The government's motion to amend SOR paragraph 2.a.(1), dated November 3, 2005, was marked Appellate Exhibit 1. At the hearing, Applicant objected to the admissibility of GE 6-10. I overrule his objections, however, the exhibits were only admitted and considered for administrative notice purposes.
3. DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), Additional Procedural Guidance ¶ E3.1.17.
4. Tr. 17-18.

5. AE A-D, F-G, I-K, N, P-S.

6. According to the Criminal Investigation Division report of investigation (GE 4), Applicant held a switchblade knife to the throat of a taxi driver. The driver received a scratch on his throat and minor cuts on his fingers when he pushed the knife away.

7. GE 7.

8. GE 8.

9. GE 4.

10. GE 5.

11. Directive, ¶ E2.2.1. ". . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ."

12. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

13. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.

14. *Egan*, 484 U.S. 518, at 528, 531.

15. Directive, ¶ E2.2.2.

16. ISCR Case No. 97-0699 (November 24, 1998) at p. 3 (Nothing in Guidelines B or C "requires that the foreign country in question have interests that are inimical to the interests of the United States.").

17. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

18. *Id.*

19. *See* ISCR Case No. 03-24144 (December 6, 2005) at p. 5 (As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.); ISCR Case No. 03-04343 (December 20, 2005) at p. 4 (There is a rebuttable presumption that contacts with immediate family members are not casual.).

20. ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).

21. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the U.S.

22. Directive, ¶ E2.A2.1.3.1.

23. Directive, ¶ E2.A5.1.1.