



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



In the matter of:)
)
) ISCR Case No. 07-15434
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Department Counsel
For Applicant: *Pro Se*

November 10, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant was born in Syria, came to the United States in July 1991, and became a U.S. citizen in 2001. Applicant has six children who were born in Syria or Saudi Arabia, are citizens of Syria or dual citizens of Syria and France, and live in Syria or Saudi Arabia. Applicant has not rebutted or mitigated the government's security concerns under foreign influence. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Statement of Reasons (SOR) on May 1, 2008, detailing security concerns under Guideline B, foreign influence. On June 2, 2008, the SOR was amended to add Guideline E, personal conduct concerns. (Item 4)

On May 7, 2008, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated June 20, 2008. The FORM contained nine attachments (Items) and 17 additional items for which Department Counsel request administrative notice be taken. On June 30, 2008, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Applicant's response to the FORM was due on July 30, 2008. As of August 14, 2008, no response from Applicant had been received. On August 5, 2008 letter from Applicant's employer was received. Department Counsel did not object to the material and the letter was admitted into the record. On August 15, 2008, the case was assigned to an administrative judge. On November 5, 2008, it was reassigned to me.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Syria and Saudi Arabia. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEX) I—XVII. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admits the foreign influence factual allegations of the SOR with explanations and denies the personal conduct allegations.

Applicant is a 72-year-old translator and cultural advisor who has worked for a defense contractor since September 2003. He is seeking a security clearance. His employer states Applicant's work performance has been impeccable. Applicant is a valuable employee, a humble person, loyal citizen, and good friend. His quality of work is admirable. His employer would like to keep Applicant as an employee. In his job, he assists the U.S. Army. Applicant speaks and writes Arabic, Circassia, English, and French.

Applicant was born in Syria in 1936. Following high school graduation, Applicant became an air traffic controller at a Syrian airport. (Item 8) He was a Syrian government worker because civil aviation is part of the Syrian government. In October 1970, Applicant received a bachelors of arts degree in English from a Syrian university. He then went to work as a translator with the fire department. With time, he was

recommended for promotion to fire chief.

In October 1971, Applicant went to Saudi Arabia and was employed as an English language teacher, at a three fold increase in salary. From 1971 to 1991, Applicant worked in Saudi Arabia. During that time he worked five years as a teacher of English language at a school. Saudi schools are run by the Ministry of Education. He worked nine years with the Saudi Port Authority as a fire and safety chief, and six additional years as a translator for private companies.

In July 1991, Applicant – then age 55 – came to the U.S. and lived with his cousins and brother, a U.S. citizen. (Item 8) Applicant worked for two years as a translator for a weekly English–Arabic newspaper. In February 2001, Applicant became a naturalized U.S. citizen. (Items 7 and 8) Applicant has a U.S. passport issued in August 2001 and valid until August 2011.

Applicant has five sons and a daughter. Two of his sons and a daughter are citizens and residents of Syria. Applicant has three sons living in Saudi Arabia. His oldest two sons were born in Syria, were Syrian and French citizens, and live in Syria. His oldest son was, at one time, a computer specialist, with whom Applicant has no contact. His second son was a car salesman in the UAE, but now lives in Syria. His current occupation is unknown as is the amount of contact Applicant has with this son.

Applicant's next three sons are Syrian citizens living in Saudi Arabia. Once every three months, Applicant calls his son who works for an agriculture company. Three times a year, Applicant calls his son who works as a window decorator. Applicant's contact with his other son is unknown. In 2002, Applicant traveled to Syria to attend the marriage of one of his sons who lives in Saudi Arabia. His children's occupations and the frequency of contact with him were provided as of January 2007. (Item 8)

Applicant's daughter was born in Syria, and is a citizen and resident of Syria. She is married and is a homemaker in Syria. Once a month, Applicant talks with his daughter on the telephone. Her husband's occupation is unknown. In 2004, Applicant visited Syria to see his daughter. He stayed with his ex-wife and also saw his son who resided with his ex-wife. In 2005, Applicant traveled to Turkey where his ex-wife joined him.

In 1970, Applicant's brother, born in and a citizen of Syria, deserted from the Syrian Army. Fearing arrest, this brother has no intention of returning to Syria. In 1982, this brother wanted to visit his mother. Their mother was too old to travel to the U.S. so Applicant accompanied his mother to Turkey where his mother and brother visited. Applicant liked Turkey so much he contemplated purchasing a farm as a second home. Nothing ever came of his desire to purchase land in Turkey. (Item 8)

Applicant married and divorced four women, two foreign citizens and two U.S. citizens. He was married: July 1967 to June 1970; August 1971 to February 1992; February 1993 to March 1994; and, February 1999 to August 2000. His first wife was born in Lebanon and is now a Syrian citizen. His second wife was born in and is a

citizen of Syria. His last two wives were native born U.S. citizens. In February 2001, Applicant took his father's last name. In 2003, Applicant's lawyer appealed to a Syrian court to change Applicant's first name and family name. His appeal was rejected.

In September 2003, Applicant completed a Questionnaire for National Security Positions, Standard Form (SF) 86. (Item 7) In response to question 13, which asked about having been employed by a foreign government, firm, or agency, Applicant answered "no." When Applicant taught school as a middle school English teacher, all schools are run by the Saudi Ministry of Education. Applicant answered as he did because he was not in a high level, advisory, or influential position.

Question 15 asked if during the previous seven years Applicant had an active passport from a foreign country. Applicant possessed a Syrian passport issued in January 1993, which expired in January 1999. He surrendered his Syrian passport to his company security officer in June 2008. He states he simply made a mistake when he answered "no" to the question.

Applicant asserts he is loyal and owes allegiance to the U.S. He is proud to be an American. He states he has no affection for Syria, has no financial interest in any foreign country, owns no foreign property, and has no foreign business interests.

SYRIA

Since 1963, the Syrian Arab Republic has been in a state of emergency and ruled by an authoritarian regime.² Syria is included on the Department of State's List of State Sponsors of Terrorism due to the presence of several terrorist groups operating in Syria.³ The Syrian Government provides political and material support to Hezbollah and Palestinian terrorist groups.⁴ Several terrorist groups' leadership and offices are in Damascus, Syria. In addition, Syria permits Iran to transfer weapons and supplies through Syria to Hezbollah in Lebanon.⁵ Syria is one of the primary transit points for foreign fighters entering Iraq.⁶

A Travel Warning is in effect for Syria following the September 2006 attacks on the U.S. Embassy in Damascus.⁷ In 1998, mobs in Damascus attacked the U.S.

² U.S. Department of State, *Country Specific Information: Syria*, November 20, 2007 at 1. (HEX II)

³ U.S. Department of State, *State Sponsors of Terrorism*, undated (HEX III); U.S. Department of State, *Country Reports on Terrorism, Chapter 3: State Sponsors of Terror Overview*, April 30, 2007 at 3. (HEX IV)

⁴ *Id.* at 3. (HEX IV)

⁵ Congressional Research Service, *Library of Congress, Syria: Background and U.S. Relations*, updated February 26, 2008, at CRS-8. (HEX V)

⁶ U.S. Department of State, *Background Note: Syria*, May 2007 at 9. (HEX I)

⁷ U.S. Department of State, *Travel Warning Syria*, September 15, 2008. (HEX VI)

Ambassador's Residence and in 2000, mobs attacked the U.S. Embassy. In May 2004, sanctions were implemented by executive order due to Syria's active and passive support of terrorism in the Middle East.⁸ Exports of U.S. goods to Syria are prohibited except for food and medicine.

The Department of State's Report on Human Rights Practices for 2007 indicates the Syrian Government's human rights record has "worsened."⁹ The following human rights abuses exist: absence of right to change government, arbitrary and/or unlawful deprivation of life, torture in prison, poor prison conditions, arbitrary arrests and detentions, absence of rule of law, severely restricted civil liberties, limited freedom of religion, government corruption, lack of transparency, and violence against women.¹⁰ Security forces frequently use torture against foreign citizens.

The four major branches of the security forces devote resources to monitoring internal dissent and individual citizens, and operate outside the control of the legal system.¹¹ Security personnel have placed foreign visitors under surveillance, monitored telephones, and search the hotel rooms and possession of foreign visitors.¹²

Dual citizens and U.S. citizens whose fathers are of Syrian descent are required to complete military service or pay to be exempted.¹³

Saudi Arabia

Saudi Arabia is a monarchy ruled by the Al Saud family. The central institution of the Saudi Arabian government is the monarchy.¹⁴ There are no political parties or national elections.¹⁵ There is no right to peaceful change of the government. The following human rights problems exist: significant restriction of civil liberties – freedoms of speech, press, assembly, association, and movement; arbitrary arrest and detention, sometimes incommunicado; infliction of severe pain by judicially sanctioned corporal

⁸White House, Executive Order: Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria, May 11, 2004. (HEX VIII)

⁹U.S. Department of State, *Country Reports on Human Rights Practices 2007: Syria*, dated March 11, 2008 at 1. (HEX VII)

¹⁰ *Id.* at 2 - 3.

¹¹ *Id.*

¹² U.S. Department of State, *Country Specific Information: Syria*, November 20, 2007 at 2. (HEX II)

¹³ *Id.* at 1.

¹⁴ U.S. Department of State, *Country Reports on Human Rights Practices 2007: Saudi Arabia*, March 11, 2008. (HEX XI)

¹⁵ U.S. Department of State, Background Notes: *Saudi Arabia*, February, 2008. (HEX XII)

punishment; beatings and other abuses; inadequate conditions at prison and detention centers; and arbitrary interference with privacy, family, home, and correspondence.¹⁶

There is a widespread perception of serious corruption and a lack of government transparency, as well as legal and societal discrimination and violence against women.¹⁷ Discrimination is faced by other religious, ethnic, and minority groups. There are strict limitations on workers rights, especially for foreign workers.

The religious police (*Mutawwa'in*) (MOI) harass, abuse, and detain citizens and foreigners.¹⁸ The government sentences criminals to punishments according to its interpretation of Shari'a (Islamic religious law). Corporal punishments provided by law include public executions by beheading, amputations, lashings, and other measures deemed appropriate by the judicial authorities. The Basic Law guarantees the inviolability of homes and the privacy of correspondence.¹⁹ Custom officials routinely open mail searching for contraband.

The U.S. and Saudi Arabia share a common concern about regional security, oil exports, and sustainable development. Following September 11, 2001, relations between Saudi Arabia and the U.S. have been strained. Fifteen of the suicide bombers in the terrorist attacks were Saudi citizens. In May 2003, suicide bombers killed 35 people, including nine Americans, in attacks in the capital. In November 2003, a terrorist attack on a housing compound left 18 dead and more than 100 injured. In June 2004, terrorists killed three Americans. In December 2004, terrorist attacks on the U.S. Consulate killed five.

The Department of State has issued a travel warning for Saudi Arabia due to concerns about possible terrorist activity directed at American citizens and U.S. interests.²⁰ Terrorists continue to target housing compounds and other establishments where westerners may be located.

Saudi Arabia has been unwilling to publically disseminate statistics regarding money laundering prosecutions, but has moved to monitor and enforce its anti-money laundering and terrorist finance laws, regulations, and guidelines.²¹ The Saudi government has permitted or encouraged fund-raising in Saudi Arabia by charitable

¹⁶ U.S. Department of State, *Country Reports on Human Rights Practices 2008: Saudi Arabia*, March 11, 2008. (HEX XI)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ U.S. Department of State, *Travel Warning: Saudi Arabia*, December 19, 2007. (HEX XIII)

²¹ Department of State, *Country Reports on Terrorism 2007, Chapter 2 – Country Reports: Middle East and North Africa Overview*, April 30, 2008. (HEX XVI)

Islamic groups and foundations linked to Al-Qaeda.²² Saudi Arabia recognizes the Palestine Liberation Organization (PLO) as the legitimate representative of the Palestine people.²³

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified

²² Congressional Research Service, Library of Congress, *Saudi Arabia: Current Issues and U.S. Relations*, August 2, 2006. (HEx XIV)

²³ *Id.*

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(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.

(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;

* * *

Applicant has two sons and a daughter who are Syrian citizens living in Syria. He has three additional sons who are Syrian citizens living in Saudi Arabia. As of 2005, Applicant was on friendly terms with his ex-wife who was a citizen and resident of Syria. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has frequent, non-casual contacts with that relative,

this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, the presence of terrorist organizations and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the United States.

The human rights records of Syria and Saudi Arabia places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationship with those family members living in Syria and Saudi Arabia does not pose a security risk and he is not in a position to be forced to choose between loyalty to the United States and his family members. With their mixed human rights records, Syria support of terrorist organizations, and possible terrorist activity directed at American citizens and U.S. interests in Saudi Arabia, it is conceivable that Syria and Saudi Arabia would target citizens in an attempt to gather valuable information from the United States.

Applicant's connections to his children and ex-wife create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to help his relatives living in Syria and Saudi Arabia by providing sensitive or classified information. The Government produced substantial evidence of Applicant's contacts with his daughter and some of his sons, and his travels to Syria in 2002 and 2004 to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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 obligations 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority.

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; [and]

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) apply with respect to some of Applicant's relatives because of his limited contacts with them. He has no contact with one son and talks to two of his sons three or four times a year. His infrequent contacts and not close relationship with these sons have a low potential of forcing him to choose between the United States and Syria. He met his burden of showing there is "little likelihood that [his relationships with these relatives] could create a risk for foreign influence or exploitation." His contacts and communications with these sons are so casual and infrequent as to not create a risk of foreign influence or exploitation. However, the same cannot be said for his daughter and other sons.

From the record it is not possible to find his children have not been political activists, challenging the policies of the Syrian or Saudi Government. There is limited evidence as to his children's current jobs and their spouses' jobs, if any. Without knowledge of their current jobs, it is not possible to find his children do not currently work for or have ever worked for the Syrian or Saudi Government or military or any news media. The record is silent as to his children's current involvement in activities which would bring attention to them or that they or other Syrian or Saudi elements are even aware of Applicant's work. As such, I cannot find there is a reduced possibility that these relatives would be targets for coercion or exploitation.

Applicant's relationship with the United States weighs against a security concern for these relationships. However, based on the record provided I can not find Applicant has "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." He worked for government contractors for some years and his duty performance is greatly appreciated by his current employer.

AG ¶¶ 8(a) and 8(c) cannot be applied with respect to his daughter and other sons. Applicant's close relationship with these children is an important positive reflection of his character; the same close relationships raise security concerns for possible foreign influence.

There is insufficient mitigation of the security concerns because of his close relationship with them, his frequent contacts with them, and because of the nature of the Syrian and Saudi Government and the complicated, and sometimes contentious relationship to the United States. See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings “once every two or three months” not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant’s parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent).²⁴

The record is insufficient to find AG ¶ 8(f) fully applies. He has no interest in property in foreign countries but there is no showing as to U.S. property and assets.

There is nothing in and of itself which makes Applicant’s hiring of a Syrian attorney to file a name change appeal in Syria to be of security concern. I find for Applicant as to SOR ¶ 1.h.

The mitigating conditions taken together are insufficient to overcome the foreign influence security concerns.

²⁴In ISCR Case No. 06-17838 at 4 (App. Bd. Jan. 28, 2008), the Appeal Board discussed the precedential value of the decisions predating the revision of the Adjudicative Guidelines indicated in n. 3, *supra*, and determined where the language of the Directive is unchanged or not substantively altered, the precedent remains valid. AG ¶ 8(c) apparently adopted the Appeal Board’s interpretation of Foreign Influence Mitigating Condition 1 (FIMC 1) under the previous guidelines. The Appeal Board had determined that contacts with relatives living in a foreign country must be both casual and infrequent to apply FIMC 1. See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). Moreover, contacts with such family members are presumed to be “not casual.” *Id.* In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant’s ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); “family members’ low-key and noncontroversial lifestyle, and the fact that the Iranian government has not contacted them about Applicant” (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative’s fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003)), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country’s friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)) and an applicant’s “refusal to travel to Iran” and “meticulous work habits and practice of strictly following the rules relating to his work” (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)). Notwithstanding the Appeal Board’s position, I conclude that many of these attributes are pertinent to the analysis in this case under the whole person concept.

Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph 15 of the Adjudicative Guidelines (AG) states a concern where there is conduct "involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."

Under AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" and ¶ 16(b) "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative"

Applicant's false answer on his SF 86 and his response during his OPM interview concerning his history of working for a foreign government and possession of a foreign passport tends to show questionable judgment, unreliability, and a lack of trustworthiness. I find ¶¶ 16(a) and 16(b) apply.

In September 2003 Applicant failed to report his employment as a middle school teacher who was employed by the Saudi Ministry of Education. He also failed to report possession of his Syrian passport that expired in 2002 in response to the question which asked if in the last seven years he had an active passport issued by a foreign government. Applicant stated he did not list the first because he was not a high level advisor or employee of the Ministry of Education and simply made a mistake in his response to the passport question. He has since delivered the expired passport to his company security officer. He asserts he was not being deceptive.

Applicant's credibility is key to determining if Applicant falsified his SF 86. Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. Being unable to evaluate Applicant's credibility I cannot find Applicant's answer was not deliberately false on the security clearance application.

Under the Directive, an applicant may mitigate the security concerns arising from questionable personal conduct under certain circumstances. AG ¶17 provides conditions that could mitigate personal conduct security concerns, including AG ¶ 17(a): "if a person "provides the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." I find this mitigating factor does not apply. Applicant has not met his burden of proving that he

made good-faith efforts to correct the omissions in his security clearance application.

AG ¶ 17(c) provides mitigation where “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” The security clearance application was executed in January 2003. I am unable to conclude it happened under unusual circumstances or does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. This potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. As previously stated, because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. I am unable to find for Applicant as to personal conduct.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in Syria, completed high school and college there, and in 1991, moved to the U.S. An important element in the foreign influence analysis is that he lived in Syria and Saudi Arabia from 1936 until 1991, which is approximately three quarters of his life. He did not become a U.S. citizen until relatively recently in 2001.

Guideline B decision concerning Syria and Saudi Arabia must take into consideration the geopolitical situation in those countries, as well as the dangers

existing there.²⁵ Syria supports terrorist organizations and terrorists operate in Saudi Arabia.

There are factors supporting approval of his access to classified information. Applicant has lived in the United States since 1991. He became a U.S. citizen in 2001. He is well liked by his current employer. What is lacking is a compellingly explanation as to his loyalty is to the United States, rather than to Syria. There is limited evidence showing his connections to the United States and to Syria.

Applicant has significant ties to his daughter and two sons who live in Syria. He has close ties of affection to them. There is a possibility Applicant could 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 United States.

After weighing the evidence of his connections to Syria and Saudi Arabia, and to the United States, I conclude Applicant has not carried his burden of fully mitigating the foreign influence security concern.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”²⁶ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is not eligible for access to classified information. However, I conclude the government should not revoke his access to sensitive information. It is extremely unlikely that individuals in Syria or Saudi Arabia would target Applicant’s relatives to gain access to sensitive, but unclassified information.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant’s current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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, foreign influence: **AGAINST APPLICANT**

Subparagraph 1.a – 1.g: **Against Applicant**

²⁵ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

²⁶ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Subparagraph 1.h: For Applicant

Subparagraph 1.g: Against Applicant

Paragraph 2, Personal Conduct: AGAINST APPLICANT

Subparagraph 2.a – 2.b: Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge