



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-00619  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Department Counsel  
For Applicant: B. Daniel Lynch, Attorney At Law

February 4, 2009

---

**Decision**

---

LOKEY ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Questionnaire For National Security Positions on August 22, 2004. On August 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under 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.

The Applicant responded to the SOR on October 2, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 22, 2008. A notice of hearing was issued on October 30, 2008, scheduling the hearing for December 11, 2008. At the hearing the Government presented four exhibits, referred to Government Exhibits 1 to 4. The Applicant called one witness, presented two exhibits, referred to as Applicant's Exhibits A and B, and testified on his own behalf. The record remained open until close of business on December 22, 2008, to allow the Applicant to submit additional documentation. Applicant submitted one Post-Hearing Exhibit consisting of seven pages, referred to as Post-Hearing Exhibit A. The official transcript (Tr.) was received on January 5, 2009.

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political conditions in Kuwait. Applicant had no objection. (Tr. p. 23). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 52 years of age and married. He is employed as an Aircraft Electronic Technician for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Kuwait City, Kuwait in 1956, and speaks English and Arabic. In 1974, after graduating from high school, at the age of eighteen, he needed a job and voluntarily joined the Kuwaiti Air Force. A year later, in 1975, during an international assignment, he came to the United States on a student visa while serving in the Kuwaiti Air Force. (Tr. p. 42). He finished the assignment in 1978, and returned to Kuwait. That next year, he was released from his military obligations and decided to return to the United States on a visitor's visa. In December 1978, while visiting the United States, he met his wife, a native born American citizen. They got married in January 1979, and eventually had two native born American children. At that point, the Applicant decided to make the United States his permanent home.

Since 1982, but for a short break in service, the Applicant has worked for his current employer in the defense industry. In 1984, he became a United States citizen. Beginning in 1988, he has held Secret and Top Secret security clearances for many years. He has never violated any security policies or procedures in protecting classified information. He has never received any violations or infractions of any sort. Since 1978, he has never returned to Kuwait for any reason.

The Applicant has a number of family members who reside in Kuwait. His only regular contact is with his seventy-two year mother in Kuwait. When they talk, they talk about family. His other relatives he knew very little about and is not close to. As a result of this security clearance investigation, the Applicant contacted his mother to get more information about his relatives in Kuwait to report to the DoD investigators. The Applicant has seven sisters, a brother, and two brother-in-laws who are also citizens

and residents of Kuwait. His father, before he passed away in 2004, retired years ago as a driver for a government ministry. Applicant believes that his mother receives a government pension for her husband's service. Other than his sister who came to visit in 1982, he has not seen any of his relatives in Kuwait since he left in 1978. The only contact he has with any of his relatives on any regular basis is his mother. He contacts her once a month or once every two to three months. Sometimes it goes six months before he calls her. (Tr. p 54). He has refrained from talking with her because he does not want it to jeopardize his security clearance. At times when he contacts his mother, if one of his sisters is there, he speaks to them briefly about family matters.

His eldest sister is a retired school teacher. Her husband, before he retired, worked for a government ministry. Another sister is married to a senior officer in the Kuwaiti Army. The Applicant has never met him and has absolutely no contact with him. (Tr. p. 57). Applicant's youngest sister, whom he also has never met, lives with their mother and works for an automobile insurance company. (Tr. pp. 55 and 108). Another sister is a kindergarten principal and she is married to a man who works for the Kuwait Oil Company. The other sisters are either middle school, high school, or college teachers. One of the Applicant's brother-in-law's works for a government ministry. The Applicant has never met or spoken to him. Another sister is married to a retired police officer. Another sister is a homemaker and she is married to an Engineer who works for a government ministry. Applicant's only brother works for a government ministry where he is a supervisor. The Applicant speaks to him about once a year. (Tr. p. 98). The Applicant has never told any of his relatives including his mother, with whom he is the closest, that he works for the defense industry. (Tr. p. 58). None of his family have any knowledge as to what the Applicant does for a living or with whom he works. None of his family in Kuwait is affiliated with any terrorists organization. (Tr. p. 119).

At one time in 2007, the Applicant was planning to visit his mother because he learned that she was very ill. Her health improved and he did not pursue the issue. When asked whether he would like to travel to Kuwait in the future, the Applicant responded, "NO". "If there is a security concern. I had it in my mind I am going to go see my mother. That was the only thing, but I don't have no plans to go." (Tr. p. 110). The Applicant testified that he contacted his security officer and was told that he could periodically contact his mother by telephone without it presenting a security issue. (Tr. pp. 121-122).

The Applicant considers himself to be an American, and with honor, dignity and loyalty he states that he will protect the interests of the United States. He states that he would never under any circumstances divulge unauthorized classified information to anyone. If he is ever confronted to do so, he would contact his security department and possibly the FBI and DSS. (Tr. p. 125). He does not participate in any cultural events or activities of middle eastern affairs. He has no financial assets in Kuwait and has never received any money from anyone in Kuwait. He does not stand to inherit anything from anyone in Kuwait.

Twenty-five letters of recommendation submitted on behalf of the Applicant from professional associates, coworkers, managers, neighbors and friends, attest to his overall stature of excellence. On the job, he is said to be excellent at troubleshooting, electrical modification abilities and at other job requirements in his expertise. He works

as many hours as necessary in order to get the job done. Some jobs require that he travel to different locations to complete, and he never complains. The Applicant is known as a hardworking, responsible, reliable, trustworthy, loyal, dedicated citizen of the United States. His integrity has never been questioned by the company. He is highly respected by his management and peers and is considered to be a great asset to the company. To many, he is a close friend, known as a loyal father and husband, who has been a good provider to his family. (Applicant's Exhibit B and Post-Hearing Exhibit A).

Applicant has received numerous awards and certificates of appreciation for his exceptional and outstanding performance and contributions on the job. (Applicant's Exhibit A).

I have taken official notice of the following facts concerning the country of Kuwait. Kuwait is a small oil-rich constitutional monarchy, ruled by the Al-Sabah family. The dispute between Iraq and Kuwait's borders and the subsequent invasion of Kuwait by Iraq, led to the first Persian gulf war between Iraq and a UN mandated coalition of countries led by the United States in 1991. The Government of Kuwait is an important partner in the ongoing U.S. led campaign against international terrorism, providing assistance in the military, diplomatic and intelligence arenas and also supporting efforts to block financing of terrorist groups. In terms of dealing with terrorists, Kuwait still lacks the strong legal provisions to deal effectively with those engaged in conspiracy to commit terrorist acts. The Kuwaiti government continues to strengthen its legal regime for combating money laundering and terrorist financing, but problems persisted, particularly with enforcement. Although money laundering was a criminal offense, terrorist financing was not specifically prohibited. Kuwait engaged in Human Rights abuses, including granting no right to change government or to form political parties, restrictions of freedom of speech and the press, assembly and association of religion; corruption; trafficking in person and the unequal rights of women. Kuwait is a destination for trafficked women and instances of trafficking were reported during the period. Kuwait is a Sunni Islam dominated society. Shi's are free to worship however, according to their faith without government interference, and the overall situation for Shi's remain stable.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

## Foreign Influence

6. *The Concern.* 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.

### Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

### Conditions that could mitigate security concerns:

8. (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.;

8. (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal or the individual has 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.

8. (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.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. 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. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign influence and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. However, Mitigating Conditions 8(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.*, 8(b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal or the individual has deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*, and 8(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* also apply.

Although the Applicant has many family members who are residents and citizens of Kuwait, the Applicant is not close to any of them. The exception is his mother with whom he has minimal contact by telephone, that ranges from once a month to once every six months. The other relatives, include seven sisters, a brother and three brother-in-laws. Some of them he has never met, and others with whom he has never talked or has superficial conversations with about once a year when they are at his mothers house when he calls her. Although some of his relatives work for the Kuwait government in some capacity, none of his relatives have knowledge of what the Applicant does for a living nor who he works for. Furthermore, they do not have any contact with the Applicant and therefore do not pose a security risk.

Here in the United States, the Applicant has a wife and two sons who are native American citizens. He has spent the last thirty years of his life working hard to establish himself as a responsible, educated, productive United States citizen. He has made great contributions to the Defense Department as evidence by his many awards and commendations. He has adopted the American way of life as his own as evidenced by his many favorable recommendations from American comrades who speak so highly on him. Clearly, his deep and abiding ties are here in the United States. His employment with the DoD and his assets are all in the United States. He has never returned to Kuwait since coming to the United States in 1978. The Applicant essentially cut all ties from Kuwait when he moved to the United States at the age of twenty-one and made it his permanent home.

It is noted that the current political situation in Kuwait elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with her foreign family members or to any foreign individual or to Kuwait in any

way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.  
Subpara. 1.a.: For the Applicant  
Subpara. 1.b.: For the Applicant  
Subpara. 1.c.: For the Applicant  
Subpara. 1.d.: For the Applicant  
Subpara. 1.e.: For the Applicant  
Subpara. 1.f.: For the Applicant  
Subpara. 1.g.: For the Applicant

### **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge