



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



In the matter of:)
)
-----) ISCR Case No. 08-00931
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

November 14, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Security Clearance Application (e-QIP), on May 11, 2007. On June 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guideline B. 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.

Applicant answered the SOR in writing on June 24, 2008 and requested a hearing before an administrative judge. In her answer she admitted all of the four allegations in the SOR (SOR ¶¶ 1.a.-d.) relating to relatives in and travel to the Syrian Arab Republic (Syria). Department Counsel was prepared to proceed on July 17, 2008. I received the case assignment on July 21, 2008. DOHA issued a notice of hearing on July 24, 2008, for a hearing on August 25, 2008. I convened the hearing as scheduled.

At the hearing, the government offered two exhibits (Exhs 1 and 2) that were admitted in evidence without objection. Applicant submitted two exhibits (Exhs. A and B) which were admitted without objection. She and one witness testified on her behalf. DOHA received the transcript of the hearing (Tr.) on September 4, 2008.

Procedural Rulings

Administrative Notice

The government requested that administrative notice be taken of ten official U.S. government documents relating to Syria and security concerns of the U.S. arising from terrorism in the Middle East. With no objection from Applicant, the documents were accepted for administrative notice (Exhs. I - X).

Findings of Fact

Applicant is a 35-year-old woman born in Syria. She came to the U.S. in 1993 when she was 20 years old. She has been employed by a defense contractor as a software engineer since 2007. Before that she was unemployed raising her family for most of the previous six years after working for an international telephone company in 2000 and 2001. She holds a degree in computer science from a U.S. university. She became a U.S. citizen in 1999. She met her husband in 1989 in Syria when he returned home to Syria from the U.S. to visit his parents. They became engaged and were married in 1993 before returning to the U.S. to live. Since coming to the U.S. they have had four children ages 3, 5, 12 and 15.

Applicant has several relatives who are citizens and residents of Syria. They include both of her parents, her mother-in-law, two brothers and two sisters. Her father retired four years ago as a manager for a government import agency. After retirement he works for a printing company to help his younger son pay for his college education. Her mother, mother-in-law, and two sisters are full time housewives. The sisters each have children. One brother is an architect with a private firm and the other one is an accountant with a private firm. He also does some inspections of banks for the government (Tr. 31).

Applicant traveled to Syria in 1996, in 2001 for five weeks, and in 2006 for six weeks. These three trips over a 16 year period are the only travels outside the U.S. she has taken. She has no plans to visit Syria and will not do so again if she has a security clearance. Her mother visited the family in the U.S. twice since 1993. The first time was

in 1998 when she helped care for the two oldest children and again in 2005 when the youngest child was born. Her mother-in-law visited the U.S. once in 1996 but spent most of time with her brother who lives in the U.S.

Applicant has telephone contact with members of her family every week or two. She does not communicate by e-mail and none of them know of her work or the name of her employer. She does not condone the policies of the Syrian government concerning terrorist activities and has no responsibility for those policies (Tr. 14).

Applicant does not have a security clearance but desires one so that she can increase the range and responsibility of her work to make a contribution to the U.S. national defense. She expressed knowledge in her testimony of the requirements imposed by holding a security clearance and knows that if she is ever approached to do anything questionable, she must report it immediately to her security officer. She has been instructed in the requirements of the International Traffic in Arms Regulations (ITAR) (Tr. 34-35). She regards the U.S. as her country and has established a family and career in the U.S. She takes great pride in her U.S. citizenship and would not do anything to jeopardize the lives of her children.

Applicant's husband is now employed by the telephone company that she worked for in 2001-2002. Her annual salary is \$68,000, and they have a combined annual income of well over \$100,000. Their assets are all in the U.S.

Testimony was given by the godmother of Applicant's four children who has been a friend of the family since Applicant arrived in the U.S. She has found them to be a trustworthy close family and has shared holidays with them. She is a natural born U.S. citizen of a different religion and background but has found the family to be well adjusted to the mores and culture of the U.S. (Tr. 17-21).

Applicant is well regarded by her supervisors at her corporate employer and they support her application for a security clearance (Exhs. A and B).

The Syrian government is an authoritarian regime. It has been identified as one of several state sponsors of terrorism by the Department of State (Exh. III). The government provides assistance and support to terrorist organizations in Syria and Lebanon. It has permitted Iran to transfer weapons and supplies through Syria to Lebanon thus helping to de-stabilize that government including involvement in the assassination of its prime minister (Exh. V). It has also served as a transit point for foreign fighters entering Iraq (Exh. I). The human rights record in Syria was described as "worsened" with detailed accounts of specific violations (Exh. VII).

In 2004, the U.S. Government imposed sanctions on Syria by an Executive Order and extended the sanctions in 2008 in response to recent occurrences in Syria that were aimed at de-stabilizing Iraq (Exh. V).

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 overarching 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 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

Guideline B, Foreign Influence

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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

Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member 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 (AG ¶ 7(a)). A second condition that could raise a security concern include connections to a foreign person, group, government, or country that create potential conflict of interest between the individual and desire to help a foreign person by providing information (AG ¶ 7(b)).

Based on the evidence of record, including Applicant's acknowledgment of family members living abroad, the Government established a basis for concern over foreign influence. The Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the 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 or government and the interests of the U.S. (AG ¶ 8(a)).

The fact that some close relatives live in Syria, and the history of that country in giving support of terrorist organizations makes it a heightened security risk. U.S. troops are fighting insurgent forces in Iraq which has a long unguarded border with Syria. Syria

has sponsored state terrorism in Lebanon and has provided shelter to hostile groups who cross the border into Iraq. While the U.S. Government has attempted to work with Syria to eliminate these problems at the border, they still occur and tensions between the two countries continue. Because of this situation, the MC is not applicable.

A second possible MC is that because the individual's sense of loyalty or obligations to the foreign persons or country is so minimal, or that she has such deep and longstanding relations and loyalties to the U.S., she can be expected to resolve any conflicts in favor of the U.S. interests(AG ¶ 8(b)). In most situations in the majority of countries in the world, this MC would be applicable in view of the strong ties Applicant has with the U.S. However, the facts relating to Syria's involvement in terrorist activities, causes me to conclude that it is not applicable.

A third possible MC is if the contacts with foreign persons are so infrequent to be deemed casual (AG ¶ 8(c)). However, by virtue of her close relationships with her foreign family members, Applicant's contacts cannot be deemed casual. Also, her contacts are relatively frequent even though she insures that the information she gives them about her employment is extremely limited.

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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

The security concerns do not arise because of any misconduct by Applicant but solely because of the family members living in a country with security concerns for the U.S. While her motivation for seeking a security clearance is commendable, the closeness and number of relatives living in Syria leaves doubts as to the wisdom of granting a clearance in these circumstances.

Applicant gives every indication in her testimony and proffered evidence that she is a loyal citizen whose gratitude for her education and career in the U.S. would not likely be compromised. However, most of her extended family lives in a dangerous part of the world where violence and hostile actions have taken place, and will likely continue in the near term. That situation creates an unacceptable risk. Applicant has not mitigated the security concerns arising from these issues of foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Conclusion

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

CHARLES D. ABLARD
Administrative Judge