



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03840  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro Se*

November 19, 2008

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF-86) dated February 27, 2006. (Government Exhibit 1). On July 25, 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.

Applicant answered the SOR in writing on August 11, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 23, 2008. A notice of hearing was issued on September 30, 2008, and the hearing was held on October 28, 2008. The Government presented two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection. Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were received without objection. The Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on November 6, 2008. 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 Syria. Applicant had no objection. (Tr. p. 16 ). 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 49 years of age and a widower. He was employed as a translator/linguist or interpreter for a defense contractor. He is currently in a temporary position as an IT consultant. 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 Aleppo, Syria in 1959 to Syrian parents. He lived in Syria until he was twenty eight years old. From January 1980 to March 1984, the Applicant completed his mandatory four year service in the Syrian Army where he served as a kitchen chef. He explained that all males between the ages of nineteen and forty must complete mandatory military service in Syria. Failure to serve results in incarcerations and torture. After completing his military service, he worked in a machine shop in Syria. Other than his mandatory military service, he has had no associations with the Syrian government.

In 1988, with a desire to leave Syria for good, he applied for and was granted a visa. That same year, he came to the United States with intentions to make it his permanent home. He has no loyalty to his old country, and no intent to ever go back. He became a naturalized United States citizen in April 25, 2003. He has never considered himself to be a dual citizen. He returned his Syrian passport to the Syrian Embassy, and holds only a United States passport. (Tr. p. 28).

In the United States, he worked as a mechanic until 1996. In 1994, he met a native born American woman at a friend's party, they started dating, and in 1995, he married her. In 2001, he started learning the computer.

The Applicant speaks four arabic dialects. In 2003, the Applicant saw that there was a need for qualified translators to help the United States Army. He applied for the job and within ten days was in Baghdad. He has been used by the United States Army and the Marines to interrogate prisoners in Iraq and Guantanamo Bay, Cuba. He was

assigned to work for an Army unit where he worked for about four and a half months. He was a Category 2 interpreter, which means that he is a United States citizen. In February 2004, Applicant was transferred to GITMO and underwent a polygraph as a part of his job requirement. He then served as a translator and linguist for the Interrogator Joint Task Force (JTF) for fifteen months. Applicant stated that the detainees hate the interpreters. This did not bother the Applicant, as he was committed to his job for the United States. In May 2005, Applicant's wife was diagnosed with colon cancer so the Applicant resigned from his position to return to the United States to help her through chemotherapy.

In January 2006, the Applicant accepted a position of recruiting manager for a translation company located near his home. His duties were to recruit linguists to support the United States military mission in Iraq and Afghanistan. The Applicant also participated in special projects to educate troops about the Arab culture and language before being deployed overseas. In February 2006, Applicant's wife passed away. Applicant indicates that there is now a job opportunity as a translator that presents itself in Florida that he would like to accept but he needs a security clearance in order to do so.

The Applicant has two brothers and two sisters who are citizens and residents of Syria. His parents are deceased. One of his brothers is a retired fabric worker, who is 70 years old, the other is a high school teacher. The Applicant has limited contact with his brothers in Syria. He speaks to his brother, the retired fabric worker, about once a year. He speaks to his other brother, the high school teacher, about once every six months or so. His brothers are happy for him that he is able to live in the United States. The Applicant's contact with his sisters is also equally as infrequent. His sisters are both housewives and married. One of his sister's husbands is a fabric worker. The other sister's husband runs a tree farm. The Applicant contacts his sister, who is married to the fabric worker about once a year. He contacts his other sister about once every five or six months. They do not know what the Applicant does for a living and the Applicant has no intentions of telling them. Applicant does not tell them because he does not want to jeopardize their lives or his own life.

Applicant testified that he would never compromise the security of the United States or a member of the Armed service for any family member in Syria. Coming from a country that is a dictatorship, he is extremely grateful to the United States for the freedoms afforded him that include a better future and a secure life. (Tr. p. 40). Applicant was asked the following hypothetical question by Department Counsel: "Let's just say somehow they found out, and they wanted you to turn over some information about the United States army and they threatened your brother and sisters— what would you do?" Applicant replied, "In by dead body". "How about if they wanted you to pass some information to prisoners in Gitmo?" Applicant replied, "That is not going to happen." "So, you would be willing to---" Applicant replied, "To sacrifice my brother or sister for my loyalty to this country." (Tr. p. 39).

Since living in the United States, the Applicant has traveled to Syria on two occasions. In 1996, he traveled to Syria to attend his brother's wedding. At that time, he worked in the IT business. In 2004, he traveled to Syria to visit his terminally ill

mother who died four days after he arrived. He obtained permission from JTF to make this trip.

The Applicant has no other family, in-laws or associates outside of the United States. All of the Applicant's financial assets are located in the United States. He has no assets in Syria.

Applicant received three Certificates of Achievement from the Commander of his unit. They are in recognition of his service with honor and distinction in the performance of his duties for the Department of Defense. (Applicant's Exhibit A).

Applicant's performance reviews as a linguist began in September 2004 with ratings of "average" and "above average". In December 2004, his performance review reflected "outstanding" ratings in every category. (Applicant's Exhibit C).

A letter from Applicant's previous employer dated September 29, 2006, indicates that he has played an essential role in pre-deployment training and translation for the United States Army, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, in support of Operation Enduring Freedom and Operation Iraqi Freedom. (Applicant's Exhibit B)

A letter from a Marine Corps veteran and a federal civil service employee of the Department of Defense, dated May 26, 2003, who is also the Applicant's apartment manager indicates that the Applicant is a person of integrity, honesty and good judgment. (Applicant's Exhibit D).

It is appropriate to discuss the relationship between the United States and Syria. Syria, since March 1963, has been ruled by an authoritarian regime. Syria is currently included on the Department of State's list of State Sponsors of Terrorism due to the presence of several terrorist groups in Syria. According to the Department of State, the Syrian Government continues to provide political and material support to Hezbollah and Palestinian terrorist groups. Several terrorist groups base their external leadership and maintain offices in Damascus. In addition Syria permits Iran to transfer weapons and supplies through Syria to Hezbollah in Lebanon. United States officials criticized Syria for permitting shipments of arms from Iran to Hezbollah in Lebanon that fueled the conflict between Lebanon and Israel in July 2006. Similarly, Syria is "one of the primary transit points for foreign fighters entering Iraq." The preliminary findings of a UN investigation have indicated that the Syrian Government was involved in the February 2005 assassination of former Lebanese Prime Minister Hariri, who actively opposed Syria's influence on Lebanese political affairs. A travel warning is in effect for Syria following September 12, 2006, attacks on the United States Embassy in Damascus. In 1998 and 2000, mobs in Damascus attacked the United States Ambassador's Residence and the United States Embassy respectively. Due to Syria's active and passive support of terrorism in the Middle East, President Bush signed an executive order implementing sanctions on May 11, 2004. These sanctions prohibit the export to Syria of products of the United States other than food or medicine, and prohibit any commercial aircraft owned or controlled by the Syrian Government from taking off from or landing in the United States. The Department of State describes the Syrian Government's human rights record as "worsened." The following human rights abuses

have been documented by the State Department as occurring in Syria: absence of right to change government, arbitrary 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 and lack of transparency, and violence against women.

## 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.

### Conditions 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;

7. (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.

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 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;

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.

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

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 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.

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 his 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 may be subject to 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 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 and, 7(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 applies.*

However, the Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: 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 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;* 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 and, 8(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority also apply.*

Although the Applicant has foreign family members who are residents and/or citizens of Syria, the Applicant has limited contact with them. Furthermore, there is no evidence of a close bond or strong evidence of affection. The Applicant's deep and abiding ties are here in the United States. All of his financial assets are in the United States. He is an American citizen. For the past twenty years he has worked hard to establish himself as a responsible, trustworthy, professional and loyal American citizen. His unique employment with the DOD and his assets are all in the United States. The Applicant has essentially cut all ties from Syria when he moved to the United States and made it his permanent home for the past twenty years.



His relationship with his family in Syria, tenuous though it is, does create a heightened risk of foreign pressure or attempted exploitation because terrorists in the Middle East seek intelligence and are hostile to the United States' interests. Syria is not a safe place for anyone, that much is true. However, there is substantial evidence that the Applicant behaved in a courageous and honorable way during his tour of duty in Iraq. His certificates from the Department of Defense reflect the Applicant's activities in Iraq, his strong sense of integrity, and specifically his ability to safeguard classified information in a combat area.

Applicant established application of Mitigating Conditions 8(a), 8(b), 8(c), and 8(d). Based on his relationships and depth of loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States interest. He has lived in the United States since 1988, and has been a naturalized American citizen for five years. He appreciates the freedoms and opportunities given to him in the United States which were not afforded to him in Syria. He has limited contact with his family members living in Syria and there is no evidence that he has connections or contact with anyone over there other than his family members.

It is noted that the current political situation in Syria elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with any foreign country or to any foreign individual or to any foreign Government in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion against the interests of the United States. Therefore, there is no possibility of foreign influence 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.
- Subparas. 1.a.: For the Applicant
- Subparas. 1.b.: For the Applicant
- Subparas. 1.c.: 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