



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



In the matter of:)
)
-----) ISCR Case No. 08-06319
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

December 31, 2009

Decision

HARVEY, Mark, Administrative Judge:

In 1960, Applicant was born in Syria. In 1982, he immigrated to the United States. In 1987, he became a U.S. citizen. His spouse and two children are U.S. citizens. However, he has retained significant connections to Syria. He traveled to Syria in 1984, 1995, 1997, 2007, and in June 2009. His parents and parents-in-law live in Syria, and he owns a share of some property in Syria. He retains a Syrian identification card. Foreign preference and foreign influence concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On August 7, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing or Security Clearance Application (e-QIP version) (hereinafter SF-86) (Government Exhibit (GE) 1). On June 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines C (foreign preference) and B (foreign influence) (GE 7). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 15, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge (GE 8). On August 3, 2009, Department Counsel was prepared to proceed. On August 10, 2009, the case was assigned to me. On September 14, 2009, DOHA issued a hearing notice setting the hearing for October 13, 2009 (GE 6). The hearing was held on October 13, 2009, as scheduled. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Transcript (Tr.) 18-19), and Applicant did not offer any exhibits (Tr. 11). There were no objections, and I admitted GE 1-5 (Tr. 19). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GE 6-8). On October 21, 2009, I received the hearing transcript.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning Syria (Tr. 13). Department Counsel provided supporting documents to show detail and context for these facts in the Administrative Notice request. Applicant and Department Counsel did not object to me taking administrative notice of all of the facts in all of the documents (Tr. 13). See the Syria section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Syria.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant admitted the SOR allegations in subparagraphs 1.a to 1.e and 2.a to 2.p with explanations in his response to the SOR (GE 8). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Applicant's Office of Personnel Management (OPM) interview on March 22, 2007, contains a thorough description of Applicant's connections to Syria (GE 2 at 3-14).

Applicant is a 49-year-old structural engineer, who has been employed by a defense contractor for 19 years (Tr. 6, 21-22). His employer recently moved him into a position where he needs a security clearance (Tr. 22). He does not have a security clearance (Tr. 39). In 2006, he earned a PhD in aerospace engineering (Tr. 7). He teaches part-time at a university (Tr. 23). In 1997, during a visit to Syria, he married his spouse, who is Palestinian (Tr. 29, 30, 32).

Foreign Preference

Applicant was born in Syria, and lived there until he was 22 years old (Tr. 23). He moved to the United States in 1982 (Tr. 23). He married his first spouse in 1982, and they were divorced in 1991 (Tr. 31). In 1987, Applicant was naturalized as a U.S. citizen. His Syrian passport expired in 1984 (Tr. 42-44; GE 3).

In 1995, Applicant acquired a Syrian identification card or document (SID) in order to avoid using his U.S. passport while traveling in Syria (Tr. 44-45; SOR ¶ 1.a; GE 8). He used the SID while traveling in Syria in 1995, 1997, 2007, and June 2009 (Tr. 44, 49; SOR ¶ 1.b; GE 8). His SID indicates he lives in a village in Syria (Tr. 46). He used his SID to avoid explaining why he has a U.S. passport at every checkpoint or traffic stop (Tr. 44-45; GE 8). His SID minimizes the possibility that he will need to pay a bribe or resolve other problems with the police while in transit in Syria (Tr. 45). He did not believe his SID had expired (Tr. 92-93). He possesses a Syrian driver's license, which expired in 1989 (Tr. 50-51; SOR ¶ 1.c; GE 8).²

Applicant and his brother decided to invest in land so that eventually they would have vacation property in Syria. Applicant obtained his Syrian birth certificate to support the purchase of land in Syria (Tr. 34; SOR ¶¶ 1.d, 2.d; GE 8). In September of 2007, Applicant borrowed approximately \$35,000 against his house in the United States and used the funds to purchase a 27 percent interest in some land in Syria (Tr. 25-29, 64-65, 90-91). He does not have a mortgage on his property in Syria (Tr. 27). He does not own any other Syrian property and does not have any Syrian bank accounts (Tr. 29). His Syrian land does not have a building on it, and he intends to build a vacation home on it (Tr. 90-91). However, there is the possibility that they might sell the Syrian land (Tr. 90). Applicant wanted to include his name on the title for the Syrian land to ensure Applicant's children will inherit their share of the property upon his death (GE 8).

Syrian citizenship is a prerequisite for property ownership in Syria (Tr. 34). Applicant's children will have to apply for Syrian citizenship to inherit the property Applicant purchased (Tr. 34). He wanted to have his children obtain Syrian citizenship; however, he did not want them to serve in the Syrian military, which is compulsory for Syrian males (Tr. 65).

²Although his Syrian driver's license expired two years after Applicant became a U.S. citizen, he did not return to Syria until 1995 and at that time his Syrian driver's license had expired. If the Syrian police asked him whether he had a Syrian driver's license, he stated that he would just pay a bribe of about \$4 in lieu of providing a Syrian driver's license (Tr. 51).

Applicant did not believe Syrian citizenship could be renounced, and he has not attempted to renounce his Syrian citizenship (Tr. 34-35). He did not make any inquiries about renouncing his Syrian citizenship because he did not want to risk the “wrath of the government” (Tr. 35).

In March 2007, an OPM investigator interviewed Applicant about his preference for Syria as compared to the United States. Applicant said his allegiance is eighty percent with the United States and twenty percent with Syria (Tr. 67; SOR ¶ 1.e; GE 3 at 15; GE 8). He said he would not want to fight on behalf of the United States against Syria; however, he would provide civil service to the United States to assist in the war effort (GE 8). He was willing to assist the United States in any war to ensure the U.S. victory; however, he did not want to be in a position of causing direct physical harm to a Syrian family member, such as by shooting them (Tr. 70).

Applicant denied that he had divided loyalty (Tr. 71; GE 8). He does not vote in U.S. elections and has not voted in Syrian elections (Tr. 101). He denied that the SOR contained evidence of his preference for Syria over the United States (GE 8). He would not even consider living in any other country than the United States (Tr. 103).

Foreign Influence

Applicant’s spouse was born in Kuwait (Tr. 32). She became a Palestinian citizen, and then she became a citizen of Morocco through her father’s Moroccan citizenship (Tr. 32, 33). In 2002, she became a U.S. citizen (Tr. 33). His two children are ages nine and seven, and they were born in the United States (Tr. 7, 33). His children live in the United States, and they attend U.S. schools (Tr. 36).

Applicant owns a house in the United States valued at about \$270,000 (Tr. 24). His equity in the property is about \$110,000 (Tr. 25). He has a retirement fund with his U.S. company, which is valued at about \$380,000 (Tr. 26). He has a U.S. bank account with about \$10,000 in it (Tr. 26). He has about \$27,000 in his children’s U.S. education fund (Tr. 27). He and his spouse have about \$29,000 invested in other U.S. accounts (Tr. 28).

Applicant traveled to Syria in 1984, 1995, 1997, 2007, and June 2009 (Tr. 47-50; SOR ¶¶ 2.a, 2.b, 2.c). His most recent visit was from June to July 2009 (Tr. 50). In 1995, a person that he believed was a Syrian intelligence agent or someone in the military questioned him (Tr. 51-54; SOR ¶ 2.a). At that time, he lacked a waiver indicating he did not have to serve in the Syrian Army (Tr. 53-58; GE 8). He was detained in a camp, and one of his relatives obtained a waiver of military service for his visit to Syria (Tr. 53-58). Once his temporary waiver was established, Applicant was released (Tr. 54-59; GE 8). In 2007, he was sent to a Syrian intelligence office on three occasions for interviews (Tr. 60-61; SOR ¶ 2.c; GE 8). They checked with Applicant about when he arrived and when he would depart Syria (Tr. 53-56, 60-61; GE 8). He received a letter from the Syrian intelligence office authorizing him to leave Syria (Tr. 53-54).

Applicant has not completed his mandatory Syrian military service (Tr. 66). He believed he could purchase an exemption for about \$5,000; however, he was hoping he would not be required to make this financial expenditure (Tr. 66). When visiting Syria, it was important to obtain the temporary waiver discussed in the previous paragraph because then it was unnecessary to purchase a permanent exemption from military service (Tr. 67).

Applicant's parents are citizens and residents of Syria (Tr. 41; SOR ¶ 2.e; GE 2 at 6; GE 8). In 1990, Applicant's parents received U.S. permanent resident cards or "green cards" (Tr. 39-41). Applicant sends about \$250 to his parents about every two months (Tr. 75; SOR ¶ 2.f; GE 8). Applicant communicates with his parents on a quarterly basis, and they visit Applicant in the United States every two or three years (GE 2 at 6).

Applicant has six brothers and four sisters (includes half-brothers and half-sisters) (Tr. 37). Four of his brothers live in the United States (Tr. 36-37, 74, 75, 79, 82). One brother is a citizen of Syria and a resident of Saudi Arabia (Tr. 77-80; SOR ¶ 2.g; GE 8). Another brother is a dual citizen of Syria and the United States, who lives in Saudi Arabia (Tr. 42, 77-80; SOR ¶ 2.h; GE 8). He speaks to his brother in Saudi Arabia about once every two weeks (Tr. 94). Three of Applicant's sisters are citizens and residents of Syria (Tr. 85-87; SOR ¶¶ 2.n and 2.o; GE 8). One sister is a citizen and resident of Syria (Tr. 81; SOR ¶ 2.i; GE 8). Applicant's aunt (related to his father's second wife) is a citizen and resident of Syria (SOR ¶ 2.k; GE 8). He has numerous nieces and nephews, who live in the United States, Saudi Arabia, and Syria. However, he does not frequently communicate with any of his brothers, sisters, nieces, or nephews, who live in Syria.

One of Applicant's brothers is a citizen and resident of Syria, and he is employed by the Syrian government (Tr. 83; SOR ¶ 2.l; GE 8). He is currently assigned or employed outside of Syria (Tr. 83). His brother's wife is a citizen and resident of Syria, and she is employed as a teacher (Tr. 84; SOR ¶ 2.m; GE 8).

Applicant's mother-in-law and father-in-law are citizens of Palestine and Morocco; however, they are residents of Syria (Tr. 88; SOR ¶ 2.p; GE 8). Applicant's spouse sends her parents \$200 to \$300 per year as gifts (Tr. 88). She talks to her parents about once per week (Tr. 88). She also talks to her brother, who is a citizen and resident of Syria, about once a month (Tr. 89). Her brother is employed by the Syrian government (SOR ¶ 2.j; GE 8).

Applicant concluded his hearing statement by emphasizing his commitment and preference for the United States over all other countries stating: "I love this place. I love this country. This is the country of my children, [it is] my country now, my adopted country, and now I leave it with that." (Tr. 113).

Character Evidence

There is no derogatory information concerning Applicant's police or financial records.³ He has never been fired from a job. There is no evidence that he has ever been arrested, used illegal drugs, or been involved in an alcohol-related incident. There is no evidence of any security violations, or work-related rule violations.

Syria⁴

Syria borders on Iraq, Israel, Syria, Turkey, and Lebanon. Syria is approximately the same size as North Dakota. Syria's population is about 19 million people.

Officially Syria is a republic; however, in reality it is ruled by an authoritarian regime. Syria is included on the U.S. State Department's List of State Sponsors of Terrorism. There are several known terrorist groups in Syria. The government of Syria continues to provide political and material support to Hezbollah and Palestinian terrorist groups. Several terrorist groups maintain their offices and some of their leadership in Syria. In addition, the government of Syria permits Iran to transfer weapons and supplies through their country to assist terrorists in Lebanon. Syria is one of the main transit points for foreign fighters entering Iraq. A travel warning for Syria warns about the risks of terrorism due to the September 2006 attack on the U.S. embassy in Damascus. Syrian forces killed the four individuals who attacked the U.S. embassy in 2006. There have been other attacks on the U.S. Ambassador's residence and the U.S. embassy in 1998 and 2000.

The United States instituted economic sanctions against Syria due to their active and passive support of terrorism in the Middle East. No commercial aircraft owned or operated by the Syrian government may take off or land in the United States. There are human rights abuses in Syria that include: systematic repression of Syrian citizens' ability to peacefully change the government; arbitrary and unlawful deprivation of life; torture and physical abuse of prisoners and detainees; arbitrary arrests and detentions; restrictions on freedom of speech, press, assembly, and association; government corruption; and violence and discrimination against women. Torture is occasionally used, including against foreign citizens. Security personnel have placed foreign visitors under surveillance, have monitored telephones, and have searched hotel rooms and possessions of foreign citizens.

Syria opposed the Iraq war in 2003, and foreign relations between Syria and the United States deteriorated. In 2005, the United States withdrew its ambassador to Syria after the assassination of Lebanese Prime Minister Hariri.

³ The source for the facts in this paragraph is his security clearance application (GE 1).

⁴The facts in the section concerning Syria are from the Department Counsel's documents submitted for Administrative Notice and U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Syria*, May 2007 (Enclosure I).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines C (foreign preference) and B (foreign influence) with respect to the allegations set forth in the SOR.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, “when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying in Applicant’s case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

In 1987, Applicant became a U.S. citizen. He continues to retain a Syrian identification card or document (SID). He retains the SID for convenience when he visits Syria. He used his SID during his visits to Syria, or had it available for use, if he was stopped by the Syrian police. He retained the SID to avoid questions about why he was in Syria, and his presentation of a U.S. passport to Syrian traffic police would cause problems and possibly detention until his status was verified. He retained his Syrian citizenship to protect his interest in his Syrian property either for himself or for his children's potential inheritance. His SID shows his residence as a Syrian village, rather than his address in the United States. AG ¶ 10(a)(5) applies.

When Applicant obtained a Syrian birth certificate as indicated in SOR ¶ 1.d, he did not implicate a security concern under Guideline C. The issue of his Syrian birth certificate is more appropriately resolved under Guideline B. Applicant's expression in SOR ¶ 1.e of an 80 percent allegiance to the United States and a 20 percent allegiance to Syria is not an expression of preference for Syria over the United States. Applicant's hearing statement clarified that the 20 percent allocation for Syria does not mean he would make any decision against U.S. interests. However, his retention of Syrian citizenship as manifested by retention of a current Syrian SID, retention of a Syrian birth certificate, and retention of an ownership interest in land located in Syria does show some foreign influence and whole person concerns, which are addressed beginning at page 10, *infra*.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(e) applies and mitigates any concern about Applicant's possession of a Syrian driver's license. His Syrian driver's license is expired and was never valid while he was in Syria after becoming a U.S. citizen. None of the other mitigating conditions fully apply to SOR ¶¶ 1.a and 1.b.

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

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 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which

could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply. Applicant, his parents, his parents-in-law, his brothers, sisters, and numerous nieces and nephews were born in Syria. Many of them live in Syria or have close connections with family members living in Syria. One brother-in-law is a Syrian government official. Applicant has particularly close connections with his mother and father. His spouse has close connections to her parents and brother. He shares living quarters with his spouse. Applicant has an interest in property in Syria amounting to about \$35,000.

Although Applicant's communications with most of his siblings and other relatives living in Syria are not particularly frequent, he does have a sufficient relationship with his parents because of communications, visits, and his payment of funds to raise a concern. His spouse has frequent, non-casual communications with her parents living in Syria, and provides funds to them. She has frequent (monthly) communications with her brother. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. Applicant's relationship with his parents, his wife's relationship with her parents, and her relationship with her brother are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships with residents of Syria create a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" any family members who are in Syria. For example, if terrorists or the Syrian Government wanted to expose Applicant to coercion, they could exert pressure on his parents. Applicant is also subject to potential, indirect coercion through his spouse's relationship with her parents and her brother.

The mere possession of close family ties with a family member living in Syria, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* 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, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. 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 collection operations against the United States. The relationship of Syria with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Syria, and his spouse's relationships with her family members living in Syria, do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and

a desire to assist a family member living in Syria, or to assist his spouse, who might be coerced through a family member living in Syria.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

Applicant has an 27 percent interest in a property in Syria that he purchased in September 2007 for about \$35,000. This interest is sufficient to raise a security concern under AG ¶ 7(e).

While there is no evidence that intelligence operatives from Syria seek or have sought classified or economic information from or through Applicant, his spouse, or their family members living in Syria, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities, and Syria has a problem with terrorism. Applicant’s relationship with family members living in Syria, or who are very likely to return to Syria, creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist his spouse, or their family members living in Syria should they be endangered by terrorists by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s contacts with his parents or his spouse’s contacts with her parents living in Syria and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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 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;

(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) have limited applicability. Applicant traveled to Syria in 1984, 1995, 1997, 2007, and June 2009. His visit from June to July 2009 was recent and of substantial duration. He was repeatedly interviewed by either Syrian intelligence or military personnel. He has never served in the Syrian military and is vulnerable to conscription or being forced to pay for a waiver of military service. Applicant has frequent contact with his parents, who live in Syria. However, he does not have frequent contacts with his siblings who live in Syria. His relationships with his siblings in Syria are mitigated under AG ¶ 8(c) because his contacts and communication with them are so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation. However, because of his connections to Syria, to his parents, and to his in-laws, Applicant is not able to fully meet his burden of showing there is “little likelihood that [his relationships with his relatives who are Syria citizens] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has strong family connections to the United States. His spouse, two children, and two brothers live in the United States. His spouse and two children are all U.S. citizens. Applicant owns a house in the United States, has substantial investments in the United States, and has a bank account in the United States.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family members who either live in Syria or spend extended periods of time visiting Syria. He frequently communicates with his parents and less frequently with his siblings. His spouse frequently communicates with her parents and brother. There is no evidence, however, that terrorists, criminals, the Syrian Government, or those conducting espionage have approached or threatened Applicant or his family in Syria to coerce Applicant or his family for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have

a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' contentious recent relationship with Syria, and especially Syria's support for terrorist groups and systematic human rights violations. Syria's conduct makes it more likely that Syria would coerce Applicant through his family, if Syria determined it was advantageous to do so.

AG ¶¶ 8(d), and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Syria. Applicant is not required to report his contacts with family members living in Syria.

AG ¶ 8(f) applies to mitigate the security concern raised by his property interest in Syria. In comparison to his property interests in the United States, and his employment in the United States, the value of his property in Syria is such that it is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure him. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e).

In sum, the primary security concern is Applicant's close relationship with his parents, and his spouse's relationships with her parents and brother. These relatives live in Syria and are readily available for coercion. A lesser concern remains because of his trips to Syria, his use of the SID to avoid inquiries from traffic police, and his contacts with Syrian intelligence or military officials. His contacts with Syrian intelligence or military officials and multiple trips to Syria highlight their knowledge of Applicant, and raise his profile while in Syria. The Syrian government's antipathy towards the United States and failure to follow the rule of law further increase the risk of coercion.

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. I have incorporated my comments under Guidelines C and B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant immigrated to the United States in 1982. Applicant received his post-graduate education in the United States. In 1987, he became a U.S. citizen. Applicant's spouse became a U.S. citizen in 2002. His two children were born in the United States. His children live in the United States, and they attend U.S. schools. Two of his brothers and their families live in the United States.

Applicant has substantial property and employment connections to the United States. The same U.S. defense contractor has employed him for 19 years. His house in the United States is valued at about \$270,000. His equity in the property is about \$110,000. He has a retirement fund with his U.S. company, which is valued at about \$380,000. He has a U.S. bank account with about \$10,000 in it. He has about \$27,000 in his children's U.S. education fund. He and his spouse have about \$29,000 invested in other U.S. accounts.

Applicant does not have frequent contacts with his siblings who live in Syria. There is no derogatory information concerning his police or financial records. He has never been fired from a job. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He loves the United States and wants to raise his children in the United States. He considers the United States to be his home, and not Syria.

The circumstances tending to support denial of a clearance for Applicant are more significant than the factors weighing towards grant of his clearance. Some of Applicant's brothers and sisters, as well as his parents, parents-in-law, and brother-in-law live in Syria. He has frequent contact with his parents and provides funds to them. His spouse has frequent contact with her parents and brother, and provides funds to her parents. He traveled to Syria in 1984, 1995, 1997, 2007, and in June 2009. He owns a share of some property in Syria. He retains a Syrian identification card. Syrian intelligence or military officials have repeatedly detained and questioned him.

A Guideline B decision concerning Syria must take into consideration the geopolitical situation in Syria, as well as the dangers existing in Syria.⁵ The danger of violence or coercion from terrorists in Syria and the threat of coercion from the Syrian government makes coercion and abuse more likely than in many other countries. Terrorists continue to threaten the interests of the United States, as well as those who cooperate and assist the United States. Syria has provided support for terrorist groups and shown some hostility towards United States efforts in Iraq, Israel, Palestine, and Lebanon.

After weighing all the facts and circumstances in this decision, including Applicant's demeanor, sincerity, and honesty at his hearing, I conclude he has not mitigated the foreign preference or foreign influence security concerns.

⁵ 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).

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”⁶ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude Applicant is not eligible for access to classified information.

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 C:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c to 1.e:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant (duplicates 2.c)
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraphs 2.e and 2.f:	Against Applicant
Subparagraphs 2.g to 2.i:	For Applicant
Subparagraph 2.j:	Against Applicant
Subparagraphs 2.k to 2.o:	For Applicant
Subparagraph 2.p:	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. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge

⁶See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).