



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08521
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

November 9, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his most recent Security Clearance Application (SF 86) on January 16, 2008. He submitted an earlier SF 86 on October 17, 1997. On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B (Foreign Influence). 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 acknowledged receipt of the SOR on May 3, 2009, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the

Government's written case on July 13, 2009.¹ Applicant received a complete file of relevant material (FORM) on July 21, 2009, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant submitted a packet (AE A). The case was assigned to me on September 2, 2009. Eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Syria. The request and the attached documents are included in the record as Item 8. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.f with a partial denial of 1.b. His admissions are incorporated in my findings of fact. I make the following findings:

Applicant is a 63-year-old man who was born and educated in Syria. He taught English in a secondary school for the Ministry of Education in Syria from 1971 until 1986. Applicant was drafted and served in the Syrian military from 1974 until 1977. He has lived in the United States since 1986 (Item 6). He became a naturalized U.S. Citizen in May 1991. Applicant attended an American college from 1988 until 1991 (Item 3). He has been employed with his current employer since October 2003 as a translator (linguist) (Item 1). Before that time, Applicant served as a translator for other federal contractors. He lived on Air Force installations in the Middle East. He has held a security clearance since 2002 (Item 1). He is currently working in the Middle East for the U.S. Government.

Applicant married his wife in 1980 in Syria (Item 5). She is a naturalized U.S. citizen and resides with Applicant in the U.S. They have three children. The two youngest, ages 20 and 18, acquired U.S. citizenship by birth in the United States. The eldest child, age 26, was born in Syria, but she became a naturalized American citizen in 1993 (Item 1). Applicant's father and mother are deceased.

Applicant has a brother and sister who are citizens and residents of Syria (SOR ¶ 1.a). His brother, who is single, works as a television technician. His sister is a retired teacher and had no connection with the Syrian government. In 1991, when Applicant became a U.S. citizen, he filed a petition for immigration to the United States to sponsor his brother and sister. The petitions are in accordance with the U.S. Immigration Act. His youngest brother entered the U.S. in 2006 and has an alien registration. He lived with Applicant for an undisclosed short period but does not live with Applicant now.

¹The Government submitted eight items in support of its contention.

Applicant's brother is a permanent resident in the U.S. His brother is retired from the Syrian Army (SOR ¶ 1.b).

Applicant traveled to Syria in 2001, 2002, 2004, 2005, and 2006 to visit his family (SOR ¶ 1.c). He used his U.S. passport and obtained permission of his squadron commander for the trips (Item 7). He completed the foreign travel questionnaire for the vacation in the foreign country. He also completed a pre-travel and post-travel questionnaire. While in Syria, he stayed at the home of his brother and sister. During an earlier time, there was no policy against a translator visiting his or her family.

Applicant's immediate family knows that he is a translator for the United States but they do not know the details of his work. His family is supportive of the efforts of the United States. None of his family members have been the victims of violence. None have been threatened due to Applicant's work for the United States. His entire family are Christians.

Applicant emphasized that "he loves his siblings but he has no obligation to them." His immediate family has lived in the United States for many years. His commitment is to his American family. He loves the United States. He has deeper and more substantial ties to the United States. Applicant is willing to bear arms for the United States and will resolve any conflict in favor of the United States interest (AE A).

Applicant has property in Syria. He purchased an apartment in 2005 for \$30,000. He uses the apartment when he visits Syria (SOR ¶ 1.f; Item 6). Applicant gave his brother a general power of attorney in 1986. His brother manages the apartment, and rents it for approximately \$100 a month. Applicant does not receive the financial benefit from the apartment. He does not have any other assets in Syria. He is not eligible for any educational or retirement benefits from Syria (Item 6). The majority of Applicant's assets, including his home, are in the United States.

Applicant sends money to his siblings in Syria in the amount of \$1,000 to \$1,500 once every three months (SOR ¶ 1.e). He maintains monthly contact with them by telephone (Item 6).

Applicant asserted his pride of U.S. citizenship and love for his work with the Air Force. He lives on military installations. He worked in combat zones for almost 11 years. He worked long hours for six days a week. He is one of the longest serving linguists in the area of responsibility (AOR). He has willingly put himself in danger every day in order to help the U.S.

Applicant emphasized that he would never betray the United States. His 2009 affidavit, submitted in response to the FORM, emphasizes his allegiance to the United States. He has lived in the U.S. with his wife and children. He owns a home in the United States, which has substantially more value than his apartment in Syria.

The evidence shows Applicant has not breached security policies or procedures while holding a security clearance. He has 11 certificates of appreciation for his work in the Middle East and Iraq (AE A). Applicant has complied with rules and existing agency requirements regarding the reporting of contacts or threats from persons, groups, or organizations from a foreign country. He affirmed in 2009 sworn statement that he has never been approached by any foreign intelligence or security service, or terrorist organization (AE A).

Applicant presented a recommendation from his commander, Chief, Security Forces, who serves with the U.S. Air Force. Applicant has worked closely with his team since October 2003. Applicant has provided total commitment to the mission. He is a competent and experienced professional. His loyalty to the unit has never been questioned. Applicant has been trusted with team-critical responsibilities. He is an honest worker. He has always been an asset to his team.

Applicant received several certificates of appreciation while serving as a translator from 2001 until the present. He is noted for his outstanding support of a unit in Operation Iraqi Freedom. He was praised for his expert linguistic skill and professionalism in his duties.

I take administrative notice of the following facts about Syria. Since March 1963, the Syrian Arab Republic 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 Hizballah and Palestinian terrorist groups. Several terrorist groups base their external leadership within Syria's borders, and maintain offices in Syria. Syria is "one of the primary transit points for foreign fighters entering Iraq."

On February 13, 2008, President Bush expanded a 2004 Executive Order implementing sanctions against Syria for its support of terrorism in the Middle East. In May 2009, President Obama continued the declaration of a national emergency, "[b]ecause the actions and policies of the Government of Syria continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."

Policies

"[N]o 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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 the applicant 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 common sense 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.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. 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 security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[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

Guideline B (Foreign Influence)

The SOR alleges Applicant has a sister and brother who are citizens of and residents of Syria (SOR ¶¶ 1.a and 1.b). His youngest brother is a retired officer in the Syrian armed forces, and lived with Applicant for an undisclosed period in 2006. It also alleges Applicant traveled to Syria in 2001, 2002, 2004, 2005, and 2006 (SOR ¶ 1.c). SOR ¶ 1.d alleges that SOR ¶ 1.e alleges Applicant sends money to his siblings in Syria to help with their living expenses, and SOR ¶ 1.f alleges that Applicant owns property in Syria. The security concern relating to Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b). Applicant’s sister and brother are citizens and residents of Syria. Applicant maintains monthly contact with them. He works as a translator for the U. S. Air Force and has visited his siblings in Syria on five separate occasions. He acknowledged that his wife knows about his work. Based on this evidence, AG ¶¶ 7(a), and (b) are raised.

Since the government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG 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.” Applicant has monthly phone contact with his brother and sister. He has visited his siblings in Syria. Thus, this mitigating condition has only partial application in this case.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant spoke to his undivided loyalty to the U.S. Based on his relationship and loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the U.S. since 1986. His wife and three children are citizens of the U.S. He owns property in the U.S. He has worked in the U.S. for many years. He has endured dangerous conditions in the Middle East and Iraq on behalf of the U.S. Air Force. There is no evidence that he has connections or contact with any people other than his sister and brothers. He has established application of AG ¶ 8(b).

Whole Person Concept

Under the whole person concept, an 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. An 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.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his or her ties to a foreign country; his or her social ties within the U.S.; and ,many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Four circumstances weigh against Applicant in the whole person analysis. First, there is a risk of terrorism and various human rights abuses in Syria. More importantly for security purposes, terrorists are hostile to the U.S. and actively seek classified information. Terrorists, and the Syrian government, could attempt to use Applicant's sister and brother to obtain such information. Second, he had numerous connections to Syria before he immigrated to the U.S. Following his birth, he spent his formative years there, along with his family. He was educated in Syria and subsequently conscripted into army. Third, his sister, and brother remain citizens of Syria. Fourth, he has contact with his siblings and has visited them in Syria. One of his brothers is a retired officer in the Syrian armed forces.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person who has lived in the U.S. since 1986 , and has been a naturalized citizen for 18 years. His spouse is a naturalized citizen and resides with him, as do his three children. He has a strong sense of patriotism toward the U.S., as witnessed by his dedication and work with the U.S. There is no evidence that he has ever taken any action that could cause potential harm to the U.S. His military supervisors, who work with him daily in a war zone, praised his work in the cause of freedom in the Middle East and Iraq.

Applicant held a security clearance without indication that he breached security policies or procedures during his tenure with the U.S. Air Force. He served the U.S. in a dangerous, high-risk situation and his certificates of commendation establish his

significant contributions to U.S. national security. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case. No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by applicant's more immediate disqualifying conduct or circumstances. See, e.g. ISCR Case. No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No 02-10113 at 4 (App. Bd. Mr. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the nation's security. See. e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.² Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant

²

I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to warrant approval of a security clearance in this case.

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge