



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



In the matter of:)	
)	
)	ISCR Case No. 08-09721
)	
)	
Applicant for Security Clearance)	

Appearances

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

December 31, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guidelines B, Foreign Influence, and C, Foreign Preference. Applicant’s eligibility for a security clearance is denied.

On May 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 16, 2009. The government requested a hearing before an administrative judge. The case was assigned to me on September 25, 2009. DOHA issued a Notice of Hearing on October 1, 2009. I convened

the hearing as scheduled on November 5, 2009. The government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted into evidence. The government also offered for administrative notice Hearing Exhibits (HE) I through X. I granted the request and the documents were considered. Applicant testified on his own behalf and he offered Exhibits (AE) A through D. They were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on November 12, 2009.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He was born in Syria and came to the U.S. in 1979 to attend college. He has lived in the U.S. since that time. He became a naturalized U.S. citizen in 1991. He earned a bachelors degree in 1985 and a master's degree in 1989. Since November 1989, he has been employed as an engineer for different American companies. In June 2007, he accepted a position with his current employer, a government contractor.¹

Applicant has been married three times. He married his first wife in 1985. She was a U.S. citizen by birth. They divorced in 1988. He met his second wife when he was in Syria. She was a Syrian citizen and resident. She never moved to the U.S. They married in 1997, and the marriage was annulled in 1998. He met his third wife when he was in Syria. They were engaged for a year and married in the U.S. in 2006. She is a citizen of Syria and a resident of the U.S. They have one child born in the U.S. and another is due to be born in December 2009.²

In 2005, Applicant applied for and was issued a Syrian passport, even though he was a naturalized U.S. citizen. The passport will not expire until April 19, 2011. He was advised by Defense Industrial Security Clearance Office (DISCO) on August 21, 2008, that if he voluntarily destroyed his Syrian passport in the presence of his Facilities Security Officer (FSO) that DISCO may grant his request for eligibility for a security clearance. He was told the procedure to follow if he intended to destroy the passport.³ On the notification letter from DISCO, a written notation was made explaining that Applicant wanted an opportunity to explain to DOHA why he would like to keep his passport.⁴ On May 29, 2009, he received the SOR, which again advised him that retaining his Syrian passport was a security concern. As of the date of his hearing, Applicant retained his Syrian passport. He stated he is willing to surrender his Syrian

¹ Tr. 23-26.

² Tr. 32-34, 40-45.

³ Tr. 19; AE C.

⁴ AE C.

passport for destruction. He stated he had not yet provided the passport for destruction because he is waiting to be instructed to do so.⁵ In a document provided at his hearing Applicant stated "I am willing to surrender my Syrian passport to my employer's security authority for [safe keeping] or destruction." In his answer to the SOR he stated that "if requested, the Syrian passport can be submitted to your office or given to your designated security officer for destruction."⁶ Despite repeated advice about the ramification of retention of his Syrian passport, Applicant continues to retain his Syrian passport. I did not find Applicant's offer to submit his passport for destruction to be made sincerely or in good faith.

Applicant explained he obtained a Syrian passport after becoming a U.S. citizen so when he traveled to Syrian he would not be subjected to officials at the airport attempting to extort money from him because he has an American passport. He stated if he shows a Syrian passport he is less likely to be solicited for money. He stated he has never used his Syrian passport for entering or exiting any country. He always uses his American passport. However, if he felt the need to, while in Syria, he would show it. Applicant also explained that he was detained at the airport because he believed the officials were attempting to extort money from him. He said he did not show his Syrian passport because it did not feel right.⁷

Applicant stated he has no rights, privileges, or obligations to any foreign country and receives no benefits from a foreign country. He stated that in 2001, he paid the country of Syria \$10,000 so he would be exempt from military service in Syria. In his answer to the SOR, he quoted a U.S. Department of State, Country Specific Information document pertaining to Syria. It stated: "the fee for exemption from military service ranges from \$5,000 to \$15,000, depending upon the circumstances, for Syrian-American and Palestinian-American men who live abroad."⁸

Applicant does not own any property in the U.S. He has approximately \$47,000 to \$50,000 in assets. He has approximately \$100,000 in his 401(k). In 1985, he purchased an unfurnished apartment as investment property in Syria. At the time it cost about \$10,000. He notes it is now worth between \$15,000 and \$20,000. He has considered selling the property, but would have difficulty transferring money from Syria to the U.S. He does not receive any income from the property or pay taxes on it. In his answer to the SOR, he stated "I am willing to sell the property if necessary."⁹

Applicant's mother is a dual citizen of Syria and the U.S. She resides in Syria. Applicant sponsored her for U.S. citizenship in 1999. She lived in the U.S. from 1999 to

⁵ Tr. 20-21.

⁶ Tr.35-40, 45-55; Answer to SOR.

⁷ Tr. 19, 45-48, 63-66.

⁸ Tr. 20, 29, 70-74.

⁹ Tr. 22, 27-32, 69; Answer to SOR.

2002. She returned to Syria and has lived there since then. She visited Applicant in the U.S. in 2006. Applicant's father is a citizen and resident of Syria. He owns a men's clothing store and is self-employed. Applicant talks to his parents weekly.¹⁰

Applicant has a brother who lives in the U.S. His brother became a naturalized U.S. citizen in 1999. His brother is a loan officer. He is divorced, and his children live with their mother in the same metropolitan area.¹¹

Applicant has a sister who is a citizen of Syria and is a permanent resident of the U.S. She is a homemaker and her husband is a doctor. They live in Saudi Arabia where her husband is the director of a government urgent care hospital. He is from Syria and is a naturalized citizen of U.S. They have lived in Saudi Arabia for a year and a half. They have one child who was born in Syria.¹²

Applicant has another sister who is a dual citizen of Syria and the United Kingdom. She is a homemaker who lives in Syria. She is married to an eye doctor. They have two children, ages 18 and 24, who attend school in the Czech Republic. The children are dual citizens of Syria and the United Kingdom. Applicant speaks with his sister weekly.¹³

Applicant's parents-in-law are citizens and residents of Syria. His father-in-law retired from the Damascus police department in 1993. Applicant did not know if his father-in-law receives a pension and does not know where he gets money to live. His mother-in-law is a homemaker. She has visited Applicant and his wife in the U.S. one time after their child was born in February 2008. His wife has almost daily contact by telephone with her parents. Applicant has contact with them two or three times a year.¹⁴

Applicant's wife has two sisters who are citizens and residents of Syria. One is a homemaker and her husband, also a citizen and resident of Syria manages a factory that makes laundry detergent. They have no children. Her other sister is single and lives with her parents.¹⁵

Applicant visited Syria seven times from April 1997 to September 2008. He estimated he visited once in 1998, once in 1999, once in 2004, three times in 2005, and once in 2006. Since 2006, Applicant's wife has visited Syria without him two to three times for about 30 days each visit. In May 2009 Applicant and his wife visited Syria and

¹⁰ Tr. 22, 76-81.

¹¹ Tr. 34, 81-83.

¹² Tr. 83-90.

¹³ Tr. 90-92.

¹⁴ Tr. 22, 92-94, 100.

¹⁵ Tr. 96-98.

saw both sets of parents and other family members, including his sister and brother-in-law and his wife's two sisters, who are Syrian citizens. Applicant's wife and his son visited for about six weeks. Applicant stated that his son is considered a Syrian citizen by the Syrian government because his mother and father were born in Syria. Applicant and his son traveled on their U.S. passports. His wife used her Syrian passport.¹⁶

Applicant was asked at his hearing if he had considered renouncing his Syrian citizenship. He responded "I have not considered it, because I had no reason, and I know it's not against the law in the United States to be a dual citizen. In his answer to government interrogatories that included the summary of his interview and which Applicant authenticated, he stated he did not know if he would renounce his Syrian citizenship, but would consider it. When asked again at his hearing if he had considered it, he stated, "if required, yes, I would renounce it."¹⁷

Syria¹⁸

Syria is ruled by an authoritarian regime and 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 external 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 terrorism due to the September 2006 attack on the U.S. embassy in Damascus. There have been other attacks on the U.S. Ambassador's residence and the U.S. embassy in 1998 and 2000.

The U.S. 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 U.S. There are human rights abuses in Syria that include systematic repression of citizens' ability to change government, arbitrary and unlawful deprivation of life, torture and physical abuse of prisoners and detainees, arbitrary arrests and detention, restrictions on freedom of speech, press, assembly, and association, government corruption, and violence and discrimination against women. Torture is frequently 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.

¹⁶ Tr. 55-63, 66-69.

¹⁷ Tr. 74-75.

¹⁸ HE I-X.

Dual citizens and U.S. citizens of Syrian origin may be subject to compulsory military service in Syria unless they receive a temporary or permanent exemption from such service prior to their entry into Syria.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern regarding foreign preference:

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. I have specifically considered the following:

(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 . . . (5) using foreign citizenship to protect financial or business interests in another country.

Applicant holds a valid Syrian passport. He paid a fee to exempt himself from serving in the Syrian military and he owns property in Syria. Due to the economic sanctions imposed on Syria by the U.S., he can not transfer money from Syria to the U.S. I find disqualifying condition (a) (1) and (5) applies.

I have considered all the mitigating conditions under AG ¶ 11. Specifically I have considered the following:

(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; and

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

Applicant's dual citizenship is not based solely on his birth in a foreign country. He was born in Syria and retained his Syrian citizenship after he became a U.S. citizen by applying for and retaining a Syrian passport. I find (a) does not apply. Applicant has not formally renounced his Syrian citizenship. He has expressed a willingness to do so, but only if requested. He has been advised about the security ramifications of retaining his passport and citizenship. I did not find that Applicant's offer to relinquish or destroy his Syrian passport, or his offer to renounce his Syrian citizenship to be sincere and in good faith. Despite repeated advice on how to relinquish his Syrian passport he has not taken any action. I find (b) does not apply. Applicant continues to hold property in Syria and paid the Syrian government so he would be exempt from military service, an obligation of male Syrian citizens.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

- (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;
- (c) 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant's wife is a citizen of Syria and his son is considered a Syrian citizen because he was born to a Syrian. She lives with Applicant in the U.S. and is a permanent U.S. resident. Applicant's mother is a dual citizen of the U.S. and Syria and resides in Syria. His father is a citizen and resident of Syria. His sister and her husband are citizens of Syria residing in Saudi Arabia and his father-in-law is a citizen and resident of Syria. Applicant owns property in Syria valued at approximately \$15,000 to \$20,000. Applicant traveled multiple times to Syria from 1998 to 2009. The latest trip was in May 2009. His wife travels to Syria and visits for approximately four to six weeks. Applicant and his wife maintain close contact with family members in Syria. I find all of the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests;
- (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
- (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.

Applicant and his wife travel regularly to Syria to visit their family. They are both in close contact with their parents and relatives in Syria. His wife is in almost daily contact with her family there. Applicant has not met his burden of establishing that it is unlikely he will be placed in a position of having to choose between the interests of his

family living in Syria and the interests of the U.S. His contacts with family in Syria could potentially force him to choose between the two.

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 foreign government or the country is known to conduct intelligence operations against the U.S. No evidence was presented that Syria conducts intelligence operations against the U.S. However, there is evidence regarding Syria's human rights record and active support and sponsorship of terrorist groups operating in Syria and other countries. This places the burden of persuasion on Applicant to demonstrate that his contacts in Syria do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. With its negative human rights record, its authoritarian government, and its willingness to assist terrorist organizations, it is conceivable that Applicant's family members could be vulnerable to coercion. I find mitigating condition (a) does not apply.

Applicant has been a U.S. citizen since 1999 and retains his dual citizenship with Syria. He has some family in the U.S., but most of his ties through his family and his wife's are in Syria. They travel there to spend time with their family, usually four to six weeks at a time. His wife is a Syrian citizen, as is his father and other relatives who also reside in Syria. His father-in-law is a retired police officer, who likely receives some type of pension from the Syrian government. Considering Syria's human rights record and well known association and support of terrorist groups I find there is a potential conflict of interest, and under the circumstances mitigating condition (b) does not apply.

Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant and his wife regularly visit their families in Syria. They also maintain regular telephone contact with their families. These contacts are not casual and infrequent. I find mitigating condition (c) does not apply.

Applicant owns real property in Syria that is valued between \$15,000 and \$20,000. Based on Applicant's total assets it is unlikely that the value of this property could be used to effectively influence, manipulate, or coerce him. Because Applicant has not divested himself of the property, it remains a concern because it is another strong tie that Applicant maintains with Syria. I find mitigating condition (f) applies to Applicant's property interests. However, I will consider this factor when evaluating the whole person.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has lived in the U.S. since 1979 and been a U.S. citizen since 1991. He retains his dual citizenship with Syrian and maintains an active Syrian passport. Despite being advised of the ramifications to his security clearance application, he continues to retain his Syrian passport. I did not find his testimony sincere or in good faith that he was willing to destroy the passport and renounce his Syrian citizenship. Applicant's wife is a Syrian citizen. Applicant and his wife maintain close contact with their relatives in Syria. His wife speaks to her family almost daily and Applicant speaks with his family weekly. They travel to Syria to visit them and sometimes stay for four to six weeks. After becoming a U.S. citizen Applicant paid the Syrian government \$10,000 to exempt him from compulsory military service. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Foreign Influence and Foreign Preference.

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-1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge