



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-00246
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro se*

November 25, 2009

Decision

MASON, Paul J., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA, Item 4) on September 5, 2008. He provided an interview to an investigator from the Office of Personnel Management (OPM) on October 10, 2008. The interview appears in his Answers to Interrogatories, dated March 10, 2009 (Item 5). On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign preference (Guideline C) and foreign influence (Guideline B). The action was taken pursuant to 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 made

effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on June 11, 2009. He requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on July 16, 2009. Applicant received the FORM on July 28, 2009. His response was due on August 28, 2009. No response was received. The case file was assigned to me on October 6, 2009.

Findings of Fact

The SOR alleges six allegations under foreign preference (Guideline C), and five allegations under foreign influence (Guideline B). Applicant essentially admitted all allegations with minor explanation. Applicant married his 26-year-old wife in April 2008. She entered the U.S. in that month on a fiance visa and has applied for a resident visa. Applicant seeks his first security clearance.

Foreign Preference

Applicant was born in the U.S. in January 1982 to Yemeni parents. This 27-year-old has worked as a software engineer II for a defense contractor since June 2008.

Applicant exercises dual citizenship with Yemen and the U.S. (SOR 1.a, Item 4). On March 10, 2009, Applicant possessed a Yemeni passport that was issued in March 2008, and scheduled to expire in 2014. He admitted that he renewed his Yemeni passport as requirement to maintain Yemeni citizenship (SOR 1.b, Item 6). Applicant was issued a Yemeni passport in March 2008 even though he is a U.S. citizen by reason of birth, and he had a valid U.S. passport issued on October 2, 2002 (SOR 1.c, Item 5). He uses his Yemeni passport instead of his U.S. passport to enter and exit Yemen (SOR 1.d, Item 3, 6). He used his Yemeni passport to enter and exit Egypt in March 2008 (SOR 1.e, item 3, 6). Applicant does not want to relinquish his Yemeni citizenship, and maintains his Yemeni passport to travel to the country and to prevent retaliation by the Government of Yemen against his family (SOR 1.f, Item 3, 5). Regarding the risk of retaliation, Applicant stated, "Furthermore, Due to the political climate, I might not be allowed to enter Yemen and there might be government retaliation against me, my wife and our families" (Item 5).

Foreign Influence

Applicant's spouse is 26 years old and a citizen of Yemen residing in the U.S. (SOR 2.a, Item 3). She is a homemaker and part-time student at a local college. She received medical technician training from a college in Yemen (Item 5 at 2). She was expecting a child in September 2009 (*Id.*).

Applicant's mother, 57 years old, is a citizen of Yemen residing in the U.S. and Yemen (SOR 2.b). She is a homemaker, having retired as a flight attendant manager for Yemenia Airlines (Item 5 at 2).

Applicant's father, 60 years old, is a citizen of Yemen residing mostly in Yemen and partially in the U.S. (SOR 2.c). He is a commercial airline pilot for Yemenia Airlines (Item 5 at 2).

Applicant's sister is a resident citizen of Yemen (SOR 2.d). She is a 22-year-old college student at the University of Lebanon (Item 5 at 2).

Applicant's father-in-law is a citizen of Yemen residing in the country (SOR 2.f). He is a physician at a hospital. Applicant's mother-in-law was born and continues to live in Yemen as a homemaker (Item 5 at 2).

Under SOR 2.g, Applicant has made six trips to Yemen since 1999 (*Id.*). The last trip was from October 2007 to April 2008, not February 2008 as alleged (Item 3).

Applicant has weekly contact with his family and visits them every two years (Item 5 at 3). Applicant's wife has weekly contact with their families (*Id.*).

Character Evidence

Applicant submitted no evidence concerning his job performance.

Administrative Notice

I have taken administrative notice of facts contained in the administrative notice documents provided by the government. The administrative notice documents are:

U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note; Yemen*, dated December 2007, (10 pages);

U.S. Department of State, *Yemen Country Specific Information*, dated April 22, 2009 (6 pages);

U.S. Department of State, Bureau of Consular Affairs, *Travel Warning-Yemen*, dated June 26, 2009 (2 pages);

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Yemen Country Reports on Human Rights Practices-2008*, dated February 25, 2009 (30 pages);

U.S. Department of State, Office of the Coordinator for Counter Terrorism, *Country Reports on Terrorism*, Chapter 2 - Country Reports; Middle East and North Africa Overview ("Yemen" at pages 23-25), dated April 30, 2009 (25 pages);

Congressional Research Service (CRS) Report for Congress, *Yemen: Current Conditions and U.S. Relations*, dated September 12, 2007 (12 pages).

After reviewing the administrative source documents, I take administrative notice of the following facts concerning the country of Yemen:

The Republic of Yemen was formed in 1990. The country is an important partner of the U.S. in the war on terrorism. However, terrorist organizations and related organizations are believed to have active operations in the eastern part of the country and the Arab Peninsula, and are engaged in extremist activities against U.S. citizens and interests. Yemen has a poor human rights record with governmental agencies engaging in human rights violations including arbitrary arrests, detentions without charges, and torture. The failure of Yemen to not always recognize the U.S. citizenship of dual citizens of Yemen and the U.S. hampers efforts by the U.S. consulate to provide aid to those individuals.

Policies

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

In reaching a decision under the Directive, the administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The administrative judge's ultimate adjudicative goal is a fair, impartial and commonsense decision that incorporates a number of variables known as the "whole person concept."

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. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The protection of the national security is the paramount consideration in every decision. AG ¶ 2(b) recommends that any reasonable doubt concerning personnel being considered for access to classified information should 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.

Analysis

Foreign Preference

AG ¶ 9 sets forth the security concern related to foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.

AG ¶ 10 lists two conditions that may be disqualifying. They are:

AG ¶ 10(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;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

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

Applicant is a dual citizen by virtue of his birth in the U.S. and his parents' birth in Yemen. After becoming a U.S. citizen through birth in 1982, and receiving his U.S. passport on October 3, 2002, he applied for and was granted a Yemeni passport in March 2008. The Yemeni passport is scheduled to expire in March 2014. By using his Yemeni passport on at least four occasions to enter and exit Yemen, he took advantage of a privilege of Yemeni citizenship he was not entitled to as a U.S. citizen. Both AG conditions apply.

AG ¶ 11 has two conditions that are potentially applicable:

AG ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*);

AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*).

Applicant has essentially stated that he does not want to renounce his citizenship because he is concerned about some kind of retaliation being taken by the Government of Yemen against his family. AG ¶ 11(b) does not apply. Applicant appears to have no intention of relinquishing his Yemeni passport as it allows him to enter and exit Yemen to see his family without a problem. AG ¶ 11(e) is inapplicable. The foreign preference guideline is resolved against Applicant.

Foreign Influence

AG ¶ 6 expresses the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 has two conditions that create security concerns that are applicable:

AG ¶ 7(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*);

AG ¶ 7(d) (*sharing living quarters with a person or persons, regardless of citizenship status, if that status creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*).

Applicant has close and continuing family ties as demonstrated by his immediate family members who are citizens and at least part-time residents of Yemen. Applicant's parents are citizens of Yemen residing part of the year in the U.S. Applicant's sister and parents-in-law are also citizens and residents of Yemen. The strength of Applicant's family ties is demonstrated by his six trips to the country since 1999. In sum, Applicant's family members are citizens and residents of Yemen, a country with diplomatic relations with the U.S., but also a country with a poor human rights record, and a location where internationally recognized terrorist organizations are believed to target U.S. citizens and interests. There is sufficient evidence under AG ¶ 7(a) to establish a heightened risk of foreign exploitation. Applicant's wife (a Yemeni citizen) adds to the heightened risk of influence because she has been sharing living quarters with him since April 2008. AG ¶ 7(d) also applies.

The burden then switches to Applicant to adduce sufficient evidence under AG ¶¶ 8(a), 8(b), and 8(c), that he is unlikely to be placed in a position of having to choose between his relatives in Yemen and U.S. interests. AG ¶ 8(a) indicates:

(the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.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 minimal, or the individual has such deep and long-lasting 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.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)

With regard to AG ¶ 8(a), Applicant's mother is retired from the airline business. However, there is no way to tell whether the airlines is a government enterprise or is a private entity. The record does not reveal whether she receives a pension from the Yemeni airline or any other information to explain how she supports herself presently. The same question arises concerning the current employment of Applicant's father as a pilot of the same airline. There is no indication whether the airline is a government business or private business. Though Applicant provided information that his father-in-law is a physician, there is no information whether he is in private practice or works for the government. Applicant also provided information that his mother-in-law is a homemaker. The record is silent on whether she has always been a homemaker or is retired from a profession. The lack of detail about Appellant's immediate family members, their occupations/activities/lifestyle, and his genuine concern about retaliation against members of his family by the Government of Yemen, renders AG 8(a) inapplicable.

Applicant's close contacts with his immediate family members is not minimal, and he has provided scant evidence showing his relationships in the U.S. AG ¶ 8(b) does not apply.

The presumption that applies to AG ¶ 8(c) is that contact with immediate family members is neither casual nor infrequent. Considering his weekly contact and physical contact every two years with his immediate family (resident citizens of Yemen) is neither casual nor infrequent, Applicant has not established mitigation under AG ¶ 8(c). Judging the entire record in its totality, the foreign influence guideline is resolved against Applicant.

Whole Person Concept

My finding against Applicant under foreign preference and foreign influence guidelines must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors at ¶ 2.(a) of the AG:

(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 the participation was 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.

Applicant was 26 years old when he declared his dual citizenship status in his September 2008 security form (Item 4), and indicated he wanted to maintain that status in March 2009 (Item 5). He took unequivocal action to sustain his dual status when he applied for and received a Yemeni passport in March 2008, 26 years after he was born in the U.S., and more than five years after he received his U.S. passport. He admitted he renewed his foreign passport to preserve his Yemeni citizenship. Applicant intends to continue using his Yemeni passport when entering and exiting the country because he believes the Government of Yemen may retaliate against his family if he renounces his citizenship or destroys his passport. Applicant's decision not to surrender his foreign passport and his frequent and close contact with his immediate family members, resident citizens of Yemen, has not been mitigated. Accordingly, the foreign preference and foreign influence guidelines are found against him.

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 (Foreign Preference, Guideline C): **AGAINST APPLICANT**

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant

Paragraph 2 (Foreign Influence, Guideline B): **AGAINST APPLICANT**

Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against Applicant
Subparagraph 2.c.	Against Applicant
Subparagraph 2.d.	Against Applicant
Subparagraph 2.e.	Against Applicant
Subparagraph 2.f.	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.

Paul J. Mason
Administrative Judge