



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03114
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

June 15, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the Financial Considerations security concern, but failed to mitigate the Foreign Influence security concern. Clearance is denied.

Statement of the Case

On September 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, foreign influence, and F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG).

Applicant answered the SOR on October 28, 2009, admitting all of the allegations except SOR subparagraphs 2.e, 2.w, and 2.s, and requesting a hearing. The case was assigned to me on December 16, 2009. On January 13, 2010, a notice of hearing was

issued scheduling the case for February 4, 2010. It was held as scheduled. At the hearing, I received seven Government exhibits, 11 Applicant exhibits, and Applicant's testimony. At the end of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted 12 additional exhibits that I incorporated into the record. The transcript was received on February 16, 2010.

Ruling on Evidence

Department Counsel requested I take administrative notice of the facts set forth in ten exhibits that I marked and identified as Hearing Exhibits (HE) I through X. Applicant requested that I take administrative notice of facts set forth in two exhibits identified as HE XI and XII. I took administrative notice of the facts set forth in Exhibits I through XI, and declined to take administrative notice of the facts set forth in HE XII. The following is a summary of the adjudicative facts:

1. The State Department has designated Syria as a state sponsor of terrorism. A number of the terrorist groups that have offices in Syria oppose U.S. policies in the Middle East, and have the ability and intent to undermine American interests (HE II at 2, HE III at 1);

2. Syria has a poor human rights record. Abuses include lack of fair public trials, arbitrary arrests and detention, and severe restrictions on civil liberties (*see generally*, HE V);

3. Syrian security forces have at times monitored its citizens' telephone conversations, fax transmissions, and mail addressed to both citizens and foreign residents (HE II at 2);

4. On May 11, 2004, President Bush signed an executive order implementing sanctions against Syria prohibiting the export to Syria of any products other than food and medicine (HE II at 4);

5. Syria has a compulsory military service requirement for all male citizens over age 18. This requirement applies to non-resident citizens unless they pay a \$2,000 exemption fee (HE II at 4);

Findings of Fact

Applicant is a 54-year-old single man with no children. A prior marriage ended in divorce in 1989. Applicant earned a bachelor of science degree in electrical engineering in December 2003, and a master's degree in electrical engineering in 2009. Since earning his master's degree, Applicant has worked as an engineer for a defense contractor. (Tr. 21, 29; GE 5 at 5)

Applicant was born in Syria. (Tr. 31) He moved to Lebanon at age five, and immigrated to the United States (U.S.) in 1979 on a student visa after finishing high school. (Tr. 31) Applicant became a naturalized U.S. citizen in 1989 and has lived in the United States since then.

Applicant's family returned to Syria some time after Applicant moved to the United States. His father is deceased. His mother is a citizen and resident of Syria. She is a homemaker. He talks to her approximately once per month.(Tr. 21, 31)

Applicant has four sisters. All of them are Syrian citizens, and all except one are Syrian residents. The sister who does not reside in Syria lives in Dubai, and is a surgeon. Another sister teaches English. Applicant does not know whether she teaches at the secondary school level or the college level. Another sister is a salesperson. Applicant does not know what one of his sisters does for a living. (Tr. 35-38)

Applicant has two brothers. One is a Syrian citizen and resident, and the other is a dual Syrian/U.S. citizen. Applicant does not know where the latter brother is currently residing. He does not know what either brother does for a living. (Tr. 37-38)

Applicant has not travelled to Syria in 15 years. (Tr. 34) He has not seen any of his relatives since then, and he has not talked to any of his siblings in 10 to 15 years. He does occasionally share e-mails with his sister, the salesperson, once every few months. (Tr. 40)

Applicant financed his education with student loans. While in college, he was unable to find steady employment that did not conflict with his classes. (GE 5 at 5) Consequently, he became dependent on credit cards to support himself. When Applicant graduated in 2003, he was unable to find a full-time job. (Tr. 18) His decision to pursue a master's degree was motivated, in part, by his job-hunting difficulties.

In September 2004, after nearly four years of unemployment, Applicant acquired a part-time job as a student assistant for a professor. He worked in this position exclusively until obtaining a full-time job in 2007. Neither job paid more than \$10 per hour. (GE 5 at 5) He worked at both jobs until 2009, when he obtained his current job.

By then, Applicant had accrued approximately \$71,000 of delinquent student loan debt, and \$54,000 of delinquent credit card debt, as listed in the SOR. One of Applicant's delinquent debts, SOR subparagraph 1.v, is an account Applicant opened in December 2003 in his name for a friend. (GE 5 at 5; GE 2 at 19) The friend used it, but failed to make any payments. By December 2005, it had become delinquent. (GE 2 at 19) Currently, approximately \$5,400 remains outstanding.

In 2007, Applicant attempted to negotiate settlements with the creditors listed in SOR subparagraphs 2.a through 2.c. (GE 5 at 5) His efforts were unsuccessful. In 2008, each of these three creditors obtained judgments against him. (*Id.*)

Since January 2009, Applicant has been earning more than triple the income he earned previously. (GE 5 at 7) This salary increase has enabled him to begin paying his debts, beginning with a credit card account, unlisted in the SOR, with a balance of approximately \$12,400. (Tr. 44) Between January and November 2009, he has made payments to this unlisted account of between \$250 and \$1,150 dollars. (AE H-J, M-R) As of February 2010, the balance was approximately \$5,000. (AE T) In May 2009, Applicant satisfied the delinquency listed in SOR subparagraph 2.e through a cashier's check for \$2,700.¹ (Answer at 3)

In July 2009, Applicant began making payments toward the satisfaction of his student loan accounts, as listed in SOR subparagraphs 2.g through 2.u. (AE Q at 2) He made another payment the following month, and two payments in October 2009 and November 2009, respectively. (AE G, R, F). Each payment totalled \$700. Thus far, he has paid \$3,500.

SOR subparagraph 2.x is a debt for \$32. When Applicant contacted this creditor he was informed that he was billed erroneously. (Tr. 53) I find this debt is not Applicant's responsibility.

In the summer of 2009, Applicant met with a lawyer about his finances. (Tr. 67) Based on his lawyer's advice, he will begin satisfying the debts listed in SOR subparagraphs 2.a through 2.d, 2.f, and 2.v after he satisfies the unlisted SOR debt. (Tr. 42-46) He anticipates satisfying the unlisted debt within three to four months, and the remaining credit card debts within five months of paying the unlisted debt. (Tr. 42, 49, 62)

Applicant prepared a financial statement in June 2009. (GE 3 at 7) He listed approximately \$1,700 of after-expense income. (GE 3 at 7) This financial statement did not include any money budgeted for student loan payments. Also, it only budgeted \$300 toward the payment of the unlisted debt.

Applicant owns a home. He has approximately \$80,000 in equity. (Tr. 68) He has \$12,000 in a 401(k) plan, and owns approximately \$4,000 of stock invested in a U.S.-owned company where he worked in the 1980s. (Tr. 71)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process.

¹SOR subparagraphs 1.e and 1.w are duplicates. (Tr. 52)

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.”

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.

Analysis

Guideline B, Foreign Influence

Under this 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” (AG ¶ 6).

Applicant’s mother is a citizen and resident of Syria. All of his siblings are Syrian citizens, and four to five of them live in Syria. Syria is a totalitarian state that sponsors terrorism, and is consistently opposed to the furtherance of U.S. objectives in the Middle East. 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,” applies.

Applicant has not seen any of his siblings in 15 years, and has not talked with any of them in 10 to 15 years. His only contact with any of his siblings is occasional e-mails shared with a sister. He does not know what three of his siblings do for a living. 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,” applies to his relationship with his siblings.

Although Applicant has not seen his mother in 15 years, he talks to her approximately once per month. AG ¶ 8(c) does not apply to Applicant’s relationship with his mother.

Applicant has lived in the United States for more than 30 years, and has been a naturalized citizen for 21 years. He has earned two post-secondary school degrees, and owns his home. However, the combination of Syria's disregard for human rights, its sponsorship of terrorism, and its antipathy to U.S. regional interests, make both AG ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.," and AG ¶ 8(b) "there is no conflict of interest, either because the individual's sense of loyalty or obligation to a 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," inapplicable. Applicant has failed to mitigate the Foreign Influence security concern.

Financial Considerations

Under this guideline, "failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information (AG ¶ 18). Here, Applicant's history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The six years of unemployment or underemployment that Applicant experienced from 2001 to 2007 greatly exacerbated his financial struggles. However, his employment woes were not the entire source of his financial problems. During the same period, he opened a credit card account for a friend who used it, generated a \$5,400 debt, and failed to make payments. Nevertheless, in light of Applicant's recent efforts to organize and satisfy his debts, I conclude that AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances," is applicable.

Since obtaining a new job in January 2009, Applicant has made \$3,500 of student loan payments, satisfied one major credit card delinquency in its entirety (SOR subparagraph 2.e), and paid approximately \$7,400 toward an unlisted delinquency. Consistent with advice from an attorney with whom he met to help him with his finances, Applicant has been focusing on satisfying the unlisted SOR debt, and will begin satisfying the SOR credit card debt once he finishes satisfying the unlisted SOR debt.

Applicant's budget did not include his student loan payments and underestimated his monthly payment to the unlisted SOR creditor. Upon reviewing Applicant's payments over the past year, I conclude his expenses are approximately \$1,000 higher than he

projected. Using a more accurate figure, Applicant still has \$700 of remaining after-expense monthly income. Moreover, he has ample income reserve to address any unexpected future financial setbacks. AG ¶¶ 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

In evaluating Guideline F cases, applicants must demonstrate a meaningful track record of financial reform to mitigate security concerns about personal finances. This includes evidence of actual debt reduction through payment of debts. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. There is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. (ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) I conclude that Applicant’s efforts at financial rehabilitation have met this criterion. Applicant has mitigated the Financial Considerations security concern.

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.

Applicant’s financial problems were not caused by extravagant spending. Instead, they were caused primarily by difficulties he had in obtaining and maintaining well-paying employment while he was working on both his undergraduate and graduate degrees. He has made significant progress since gaining a more lucrative job. Applicant has mitigated the Financial Considerations security concern.

Applicant moved from Syria nearly 50 years ago. He has no allegiance to Syria. However, I cannot conclude that his relationship with his mother does not pose a security risk given the Syrian government’s totalitarian nature and hostility to U.S. regional objectives. Applicant has failed to mitigate the Foreign Influence security concern.

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 B:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a - 2.x:	For 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.

MARC E. CURRY
Administrative Judge