



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



In the matter of:)
)
-----) ISCR Case No. 10-02904
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant was born in Syria in 1959. He immigrated to the United States in 1988, and he became a U.S. citizen in 1995. His current spouse immigrated to the United States from Syria in 2005 and will be a U.S. citizen in the near future. His five-year-old child is a U.S. citizen. However, Applicant has retained significant connections to Syria. He traveled to Syria every year from 2002 to 2008 and stayed on each occasion for 30 to 35 days. His parents, mother-in-law, and siblings live in Syria. He communicates frequently with his mother. Foreign preference concerns are mitigated; however, foreign influence concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On September 21, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing or Security Clearance Application (e-QIP version) (hereinafter SF-86) (Government Exhibit (GE) 1). On June 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines B (foreign influence) and C (foreign preference). 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 adjudicative guidelines (AGs) promulgated by the President on December 29, 2005. 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 July 12, 2010, Applicant responded to the SOR and requested a hearing before an administrative judge. On October 1, 2010, Department Counsel was prepared to proceed. On October 6, 2010, the case was assigned to me. On October 22, 2010, DOHA issued a hearing notice and the hearing was held on November 17, 2010. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 22-23), and Applicant offered a written statement (AE A) with 14 enclosures. (Tr. 24-25, 107-109) There were no objections, and I admitted GE 1-3, and AE A with 14 enclosures. (Tr. 23, 25, 109) Additionally, I admitted the SOR, response to the SOR and the hearing notice. (HE 1-3) On November 29, 2010, I received the hearing transcript.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning Syria (Tr. 17-18). Department Counsel provided supporting documents to show detail and context for the facts in the Administrative Notice request. Applicant did not object to me taking administrative notice of the facts in all of the documents (Tr. 18). The Syria section of the Findings of Fact of this decision, *infra*, contains 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 derived 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.b with explanations in his response to the SOR (HE 3). 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 contains a thorough description of Applicant's connections to Syria and the employment of his relatives in Syria (GE 3).

Applicant is a 51-year-old technical architect, who has been employed by a defense contractor for about one year. (Tr. 6, 33, 41, 42) He has extensive experience designing security systems for computers. (Tr. 42) For ten years he worked for a large corporation that provides financial services. (Tr. 42-43) He has been entrusted with sensitive financial and personal information for many years. (Tr. 43-44)

Applicant was born in Syria. (Tr. 33) He received his bachelor's degree in civil engineering in Syria in 1984. (Tr. 39, 40) He served in the Syrian military as an engineer in a civilian-type capacity. (Tr. 34-35) Military service in Syria is mandatory. (Tr. 34)

Applicant has lived in the United States for 21 years. (Tr. 26) He was married to his first spouse from 1991 to 1995, and his first spouse was a U.S. citizen. (Tr. 36; GE 1) In 1992, he received a master's degree in engineering from a U.S. university. (Tr. 6, 7, 39, 40) Applicant was naturalized as a U.S. citizen in 1995. (Tr. 21) He does not have a criminal record. (Tr. 20) He has a credit score of 840. (Tr. 74) He has had a non-Department of Defense clearance for two years. (Tr. 26)

Foreign Influence

Applicant's current spouse is a citizen of Syria, and she resides with Applicant in the United States. (Tr. 27, 75; SOR ¶ 1.a; HE 2, 3) He met his spouse in Syria in 2004. (Tr. 36, 76) They married in the United States in 2005. (Tr. 36, 76) She has lived in the United States for about six years, and has received permanent residency status from the U.S. Government. (Tr. 27, 37; HE 3 at 2-3) Applicant expects her to be naturalized as a U.S. citizen in the next several months. (Tr. 27, 37; HE 3 at 3, 8) Once she has her U.S. citizenship, he intends to ask his spouse to surrender her Syrian passport. (Tr. 37) Applicant's five-year-old daughter was born in the United States. (Tr. 22, 38, 79)

Applicant's mother and father are citizens and residents of Syria. (Tr. 68-69; SOR ¶ 1.b; HE 2, 3) Applicant's father is 75 years old, and his mother is 70 years old. (Tr. 82; HE 3 at 3) His mother had a stroke more than ten years ago, and she is half paralyzed. (Tr. 67, 88; HE 3 at 4) His parents are simple people, and are not aware that Applicant has employment related to the U.S. Government. (HE 3 at 3) His father owns a factory and two stores in Syria, and he is very wealthy. (Tr. 69-71) They know he works with computers; however, they are unaware that he has applied for a security clearance. (Tr. 91-92; HE 3 at 3) Applicant usually calls his mother every two to four weeks. (Tr. 105; GE 3 at 4) He calls his father about once a month. (GE 3 at 4) Applicant's most recent contact with his parents was when he telephoned his mother three or four weeks before his hearing. (Tr. 91) Applicant's family members in Syria are very close and loyal to each other, and they provide financial support to anyone in the family who is elderly and requires assistance. (Tr. 105-106)

Applicant's five brothers and three sisters are citizens and residents of Syria. (Tr. 28, 84-90; SOR ¶ 1.c; HE 2, 3) Applicant has very limited contacts with his siblings living in Syria. (Tr. 28; HE 3 at 3; GE 3 at 4-6) His most recent contact with any of his siblings was for about 15 minutes, two years ago. (Tr. 28, 86; HE 3 at 3)

Applicant's father-in-law is deceased. (Tr. 92) His mother-in-law is a citizen and resident of Syria. (Tr. 92-93; SOR ¶ 1.d; HE 2, 3) Applicant has very limited contacts with his mother-in-law. (HE 3 at 3-4) His most recent contact was for about five minutes two years ago. (HE 3 at 3-4) His spouse contacts her mother on major holidays. (Tr. 96) She talks to her mother every two or three months. (Tr. 102) The last time his spouse went to Syria was in December 2008. (Tr. 103-104) Applicant has two brothers-in-law and one sister-in-law. (Tr. 77) One of his brothers-in-law is a U.S. Department of Defense employee living in the United States, and he is a U.S. citizen. (Tr. 94)

Applicant's wife's uncle and cousin are U.S. citizens, and they live in the United States. (Tr. 106) Applicant contended he renounced his Syrian citizenship when he took the U.S. citizenship oath in 1995. (GE 1)

Applicant traveled to Syria to visit his parents living in Syria in 2002, 2003, 2004, 2005, 2006, 2007, and 2008. (Tr. 29; SOR ¶ 1.e; HE 2, 3) When he went to Syria, he stayed in Syria for 30 to 35 days. (GE 3 at 6) His most recent trip to Syria was in December 2008. (Tr. 29, 65, 97)

If anyone seeks classified information from Applicant, he promised to report the attempt to the proper authorities. (Tr. 28-29) Applicant owns a house in the United States and has financial investments in the United States, such as a 401(k) retirement account. (Tr. 30; AE A at Encl. 4) He pays taxes to support the U.S. Government. (Tr. 30; AE A at Encls. 10-12) He does not have any financial interests in any foreign countries, including Syria. (Tr. 100-101)

Foreign Preference

Applicant had a Syrian passport, and it expired. (Tr. 47) He obtained a new Syrian passport in about September 2006, even though he became a U.S. citizen in 1995. (Tr. 30, 47; SOR ¶ 2.a; HE 2, 3 at 5) Applicant used his Syrian passport instead of his U.S. passport when he traveled to Syria in about 2002, 2003, 2004, 2005, 2006, 2007, and 2008. (Tr. 30, 60-61; SOR ¶ 2.b; HE 2, 3 at 5-6) He did not use his Syrian passport to visit countries other than Syria. (Tr. 30, 61-65) He used the Syrian passport to enter Syria because he saved fees and was not aware of the security concerns raised by such use. (Tr. 30, 60-61) When Applicant learned that possession of a Syrian passport raised security concerns, he sent his Syrian passport to the Syrian Embassy. (Tr. 30, 48-58; HE 3 at 6) He has not had a Syrian passport since 2009. (HE 3 at 6) He did not have any specific plans to return to Syria. (Tr. 67) However, it would be "un-American" for him not to go and see his family in Syria, especially if his mother became ill. (Tr. 67-68)

Character Evidence

There is no derogatory information concerning Applicant's police or financial records.² There is no evidence that he has ever been arrested, used illegal drugs, or

² The source for the facts in this paragraph is his security clearance application (GE 1).

been involved in an alcohol-related incident. There is no evidence of any security violations, or work-related rule violations.

Applicant provided his performance evaluation for March 1, 2010 to June 1, 2010. (AE A at Encl. 7) He received ratings of “exceeds expectations” in most categories, and “meets expectations” in the other categories. All comments were positive and lauded his hard work and contributions to mission accomplishment.

Applicant provided four character statements from friends and coworkers. (AE A at Encl. 8) His character statements described him as dependable, honest, responsible, technically competent, professional, security-focused, mature, practical, loyal, and predicted he would be an asset to any organization. They emphasized his integrity, loyalty, and trustworthiness and recommended approval of his security clearance.

Syria

Syria borders on Iraq, Israel, Syria, Turkey, and Lebanon. Syria is approximately the same size as North Dakota. Syria’s population in 2009 is estimated to be about 21 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 Syrian Government 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 Syrian Government permits Iran to transfer weapons and supplies through Syria 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.

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 applicant’s 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about 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 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 B (foreign influence) and C (foreign preference).

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 three 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; and

(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.

AG ¶¶ 7(a), 7(b), and 7(d) apply. Applicant, his parents, his mother-in-law, his brothers, sisters, and several siblings-in-law were born in Syria. Many of them live in Syria or have close connections with family members living in Syria. Applicant has particularly close connections with his mother. His spouse has close connections to her mother. He shares living quarters with his spouse. He visited Syria in 2002, 2003, 2004, 2005, 2006, 2007, and 2008, and when he went to Syria, he stayed in Syria for 30 to 35 days.

Applicant has a sufficient relationship with his mother because of communications and visits to raise a concern. His spouse has frequent, non-casual communications with her mother living in Syria. “[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 mother, and his wife’s relationship with her mother are sufficient to create “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” because of Syria’s “disregard for human rights, its sponsorship of terrorism, and its antipathy to U.S. regional interests” See ISCR Case No. 09-03114 at 2 (App. Bd. Oct. 22, 2010) (discussing insufficient mitigation because of Syria’s internal circumstances).

Applicant and his spouse’s relationships with their mothers living in 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 mother. Applicant is also subject to potential, indirect coercion through his spouse’s relationship with her mother.

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).

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 mother or his spouse's contacts with her mother living in Syria and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) 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 visited Syria in 2002, 2003, 2004, 2005, 2006, 2007, and 2008, and when he went to Syria, he stayed in Syria for 30 to 35 days. His visit in December 2008 was recent and all of his visits were of substantial duration. He served in the Syrian military in a civilian-type capacity. Applicant has frequent contact with his mother, who lives 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. See ISCR Case No. 09-03114 at 2 (App. Bd. Oct. 22, 2010) (holding communications once a month were sufficient to be frequent). However, because of his connections to Syria, to his mother, and his spouse's connections to her mother, 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 will soon be a U.S. citizen, and his five-year-old daughter is a U.S. citizen. Applicant owns a house in the United States, has substantial investments in the United States, and has a 401(k) 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 live in Syria. He frequently communicates with his mother and rarely communicates with his siblings. His spouse frequently communicates with her mother. 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 U.S. 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 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. The fact that Applicant's family members living in Syria are unaware that he has U.S. Government-related employment or that he has applied for a security clearance reduces the risk that Applicant will be coerced through his family living in Syria; however, the risk is still substantial. Syrian intelligence agents and terrorists might learn that Applicant has a clearance through means other than his family living in Syria.

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) does not apply because it is only available to mitigate concerns raised by property interests in Syria under AG ¶ 7(e). Applicant does not have any property interests or investments in Syria.

In sum, the primary security concern is Applicant's close relationship with his mother, and his spouse's relationships with her mother. Security concerns relating to Applicant's relationships with his siblings living in Syria are mitigated because his contacts with those siblings are not recent. These relatives live in Syria and are readily available for coercion. A lesser concern remains because of his trips to Syria. His multiple trips to Syria increase Syrian intelligence's 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.

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.

Applicant obtained a new Syrian passport in about September 2006, even though he became a U.S. citizen in 1995. (SOR ¶ 2.a) He used his Syrian passport instead of his U.S. passport when he traveled to Syria in about 2002, 2003, 2004, 2005, 2006, 2007, and 2008. (SOR ¶ 2.b) AG ¶ 10(a) is not limited to the seven specified examples. Obtaining a Syrian passport and using it to avoid fees other U.S. citizens pay requires application of AG ¶ 10(a), and further inquiry regarding potential application of mitigating conditions is required.

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 passport. He has surrendered his Syrian passport to the Syrian embassy, and his action resolves foreign preference security concerns.

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; however, they are insufficient to fully mitigate foreign influence concerns. Applicant immigrated to the United States in 1989. Applicant received his post-graduate education in the United States. In 1995, he became a U.S. citizen. Applicant's spouse will soon become a U.S. citizen, possibly in the next month or so. His five-year-old daughter was born in the United States. His daughter lives in the United States, and she attends U.S. schools. Applicant is active in his community, owns a house in the United States, pays his taxes, and is absolutely loyal to the United States. 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. He made credible, sincere statements at his hearing about his loyalty to the United States and his strong familial bond to his mother. These are laudable, very positive traits, which show his good character.

Applicant has substantial property and employment connections to the United States. He has a retirement fund invested in the United States. There is no derogatory

information concerning Applicant's police or financial records. 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. He provided a positive performance evaluation that lauded his hard work and contributions to mission accomplishment. Four character statements from friends and coworkers described Applicant as dependable, honest, responsible, technically competent, professional, security-focused, mature, practical. They emphasized his integrity, loyalty, and trustworthiness and recommended approval of his security clearance.

The circumstances tending to support continuing foreign influence concerns are more significant than the factors weighing towards grant of his clearance. Some of Applicant's brothers and sisters, as well as his parents, mother-in-law, and some siblings-in-law live in Syria. He has frequent contact with his mother. His spouse has frequent contact with her mother. Applicant visited Syria in 2002, 2003, 2004, 2005, 2006, 2007, and 2008, and when he went to Syria, he stayed in Syria for 30 to 35 days. Each time he traveled to Syria from 2002 to 2008, he used his Syrian passport even though he was a naturalized U.S. citizen.

A Guideline B decision concerning Syria must take into consideration the geopolitical situation in Syria, as well as the dangers existing in Syria.³ The danger of violence or coercion from terrorists in Syria and the threat of coercion from the Syrian Government make 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 mitigated the foreign preference concern; however, he has not mitigated the foreign influence security concerns.

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"⁴ 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.

³ 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).

⁴ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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.

Mark Harvey
Administrative Judge