



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



In the matter of:)
)
) ISCR Case No. 11-00074
)
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: James S. DelSordo, Esquire

12/09/2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a naturalized U.S. citizen, who was born in Egypt but moved to Libya at age ten. He renounced his Libyan citizenship, and he has lived continuously in the United States since January 1978. Foreign influence concerns are raised because of his close family ties to Libyan resident citizens, and his and his brothers' outspoken criticisms of the Qadhafi regime. The recent liberation of Libya by the Qadhafi opposition lessens, but does not fully mitigate, the security risk. Clearance denied.

Statement of the Case

On April 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B (Foreign Influence), which provided the basis for its preliminary decision to deny him a security clearance. 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

adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR on April 28, 2011, and he requested a hearing. On June 3, 2011, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and I scheduled a hearing for June 29, 2011.

I convened the hearing as scheduled. Four Government exhibits (GE 1-4) were admitted, and Applicant testified. I also agreed to take administrative notice of pertinent facts related to Libya, as requested by the Government and without objection from Applicant.¹ A transcript (Tr.) of the hearing was received on July 11, 2011.

Procedural Ruling on Administrative Notice

The DOHA Appeal Board has repeatedly emphasized the importance of making accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See e.g., ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007.) In light of significant events in Libya that occurred after the close of the evidentiary record in this case, I reopened the record on November 1, 2011, to give the parties an opportunity to file any objections to my considering current U.S. government publications and statements on the situation in Libya and its international relations, including with the United States. Both parties were granted until November 15, 2011, to propose new facts for administrative notice based on recent developments. On November 2, 2011, Department Counsel noted no objections to my Order, which included the following facts for administrative notice:

On July 15, 2011, the Obama Administration recognized the Transitional National Council (TNC) as the interim legitimate governing authority for Libya. On October 23, 2011, Libya declared its liberation from the Qadhafi regime. U.S. President Obama issued a statement to work with the TNC and an empowered transitional government toward a stable political transition with free and fair elections in Libya. Effective October 31, 2011, the United Nations Security Council (UNSC) in Resolution 2016 terminated the protection of civilians and no-fly zone authorizations contained in UNSC Resolution 1973.

Department Counsel proposed no new facts for administrative notice, and Applicant did not respond. Accordingly, after considering the State Department's *Background Note: Libya*, dated July 7, 2011; *Libya Country Specific Information*, dated November 18, 2011; and an updated *Travel Warning* for Libya dated September 22, 2011, as well as other official pronouncements from the Obama Administration, I took administrative notice of pertinent facts related to Libya, as set forth in the Findings of Fact below.

¹The Government's request for administrative notice, dated April 13, 2011, and source documents were not submitted to me before the hearing.

Summary of SOR Allegations

The SOR alleges under Guideline B, Foreign Influence, that as of April 6, 2011: Applicant's two brothers and one sister are resident citizens of Libya (SOR 1.a); that one brother works for an oil company partially owned by the Libyan government (SOR 1.b); that his deceased brother (brother #1) held various positions in the Libyan government from 1968 to 1972 and was later imprisoned for his political views for most of the time between 2002 and his death in 2009 (SOR 1.c); that Applicant has financially assisted his late brother's family since 2004 (SOR 1.d); that Applicant's brother-in-law is a judge in Libya (SOR 1.e); that Applicant has contact with several nieces and nephews living in Libya (SOR 1.f); and that Applicant has been publicly critical of the Libyan government since 1981 (SOR 1.g).

Findings of Fact

Applicant admitted the allegations with some clarifications, including that he had two sisters currently living in Libya, and that the brother working for the oil company planned to retire in June 2011. He denied any intent to send financial assistance to his late brother's family in Libya in the near future because of the uncertainty of political events in Libya and his own financial situation. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 52-year-old software engineer, who has been employed since November 2007 by a company that subcontracts with a university-affiliated laboratory performing research and development for the Department of Defense (DoD). Applicant was granted an interim secret-level security clearance for his work on a U.S. military base. (GE 2; Tr. 46-47.) As of June 2011, his work was predominantly unclassified. (Tr. 55.)

Applicant is the youngest of six children (four sons and two daughters) born between 1941 and 1959 to resident citizens of Egypt. Applicant's father, who also held citizenship with his native Libya, worked for the Egyptian government in the mid-1950s, but he was disabled at the time of Applicant's birth. (GE 1, 2; Tr. 24.) In February 1969, Applicant's father died. Applicant and his family joined brother #1 in Libya, and they became Libyan citizens. (GE 1.) Applicant's brother #1 worked as a civil engineer for the Libyan government from 1968 to 1969, and he held a high position within the Libyan government for about a year. (Tr. 56.) He was removed for advocating policies threatening to the Qadhafi regime, and he eventually severed his ties with the Libyan government in 1972. (GE 2.) From 1973 to 1978, Applicant's brother #1 worked as an engineering entrepreneur, partnering with businesses in the United States and the United Kingdom. (GE 2.) Brother #1 arranged for Applicant to study abroad, and after five months of studying English in the United Kingdom, Applicant came to the United States in January 1978 on a student visa. (GE 2.)

Applicant attended a U.S. university from April 1978 to December 1982. He was awarded his Bachelor of Science degree in electrical engineering in June 1983. (GE 1, 2; Tr. 61.) Applicant's brother #1 paid for Applicant's education through 1980. On application from Applicant, the Libyan government paid for Applicant's final two years at the U.S. university. Applicant contracted to return to Libya after he earned his degree. From 1981 to 1982, he attended weekly, local meetings of a non-violent Arab organization that was against the Qadhafi regime.² (GE 2; Tr. 61-62.) Following his graduation, Applicant did not consider himself legally bound to return to Libya, even after the Libyan embassy sent him a one-way plane ticket, and he borrowed from brother #1 to support himself while looking for employment in the United States. (GE 2.)

In July 1984, Applicant married a U.S. native citizen. When his Libyan passport expired in 1985, Applicant made no effort to renew it. In August 1985, he and his now former wife had their first son, and in 1986, they bought a home. In March 1990, Applicant became a naturalized U.S. citizen. In his mind, he renounced his Libyan citizenship when he became a U.S. citizen.³ Applicant and his spouse had marital problems, which persisted despite the birth of their second son in 1990, and they eventually divorced in 1995. (GE 1, 2.) Applicant is estranged from his first son (GE 1), although they were working on their relationship "a little bit" as of June 2011. (Tr. 99.) His younger son lives with his ex-wife. (GE 1.)

During the early to mid-1990s, Applicant was estranged from brother #1. Applicant had borrowed \$25,000 from him to cover the down payment and closing costs for his home in the United States. When his brother needed the funds a few years later, Applicant could not repay him, and it caused problems in their relationship. (GE 1, 2.) Sometime after his divorce, Applicant repaid his brother most of the borrowed funds. (GE 2.)

Applicant's brother #1 and his family were threatened by the Qadhafi regime because of his outspoken advocacy for human rights and democracy in Libya, and brother #1 was eventually imprisoned in Libya in October 2002 after speaking out publicly for reform. (GE 2; Tr. 26, 30-31, 41-42.)

Around 1999, Applicant began his own efforts to promote democracy in Libya. It started with Internet research, and sporadic email and telephone contact with a U.S. citizen of Libyan descent (Mr. X), whom he believed held similar views. In October 2002 and April 2003, Applicant attended conferences in the United States about the future of Libya, which were broadcast on the web. The conferences led to the formation of a U.S.

²Applicant testified that some members of the organization expressed anti-American sentiments back then, and that he had held a pro-Arab view himself. However, he had since changed ("I'm living in America. You see a lot of goodness here"). (Tr. 62-65.)

³The U.S. State Department reports in *Libya, Country Specific Information*, dated November 18, 2011, that the government of Libya considers all children born to Libyan fathers to be Libyan citizens even if they were not issued a Libyan birth certificate or a Libyan passport, and that dual Libyan-American nationals may not enter or leave Libya on their U.S. passports. Applicant has never considered himself to hold dual citizenship. It is unclear what effect, if any, his U.S. naturalization had on his Libyan citizenship.

based non-governmental organization (NGO) that advocated for reform in Libya. Through his involvement on the board of the NGO for two years, and because of his brother's imprisonment in Libya, Applicant had contact with U.S. and foreign media; with high-ranking U.S. and foreign officials, including a former Libyan diplomat; and with U.S. and international conference attendees,⁴ to as recently as late 2008. He also had contact, some uninitiated by him, with some persons of Libyan descent or nationality, whom he suspects or knows were involved with the Qadhafi regime.⁵ (GE 1, 2; Tr. 67-75.) In March 2004, Applicant's brother #1 was released from prison in Libya after some U.S. diplomatic efforts, only for him to be re-arrested two weeks later. (GE 2, 3.) Around December 2005, Applicant was approached by a Libyan-American, who held a position in the Qadhafi regime. Applicant was asked to "help launder the image of the Qadhafi regime." In return, this Libyan-American offered to visit Applicant's brother #1 in prison in Libya. Brother #1 had not been heard from in about eight months. (Tr. 27.) Applicant refused, and he reportedly informed the U.S. State Department and the FBI of this and similar contacts attempting to influence him or threatening to him and his family in Libya.⁶ From the fall of 2006 until June 2007, a Libyan citizen residing in the United States made threatening comments to Applicant every time Applicant publicized an article or spoke at a conference about his brother #1's case in Libya. The calls stopped after Applicant complained to the local police. (GE 2, Tr. 27-29, 43, 72.)

Applicant's brother #1 languished in prison and later in prison hospitals in Libya while his family members faced ever greater harassment. In May 2009, brother #1 died while still a political prisoner in a hospital outside of Libya. Applicant's last contact with his brother was in March 2004. (GE 2, 3, 4.)

After several employments as a software engineer, each lasting less than one year, Applicant began working for his present employer in November 2007. On a December 11, 2007, Questionnaire for National Security Positions (QNSP), Applicant disclosed that he had relatives living in Libya and contacts with other foreign nationals, including some Libyan citizens. He also disclosed his involvement with the NGO, and his contacts until August 2006 with Mr. X. Applicant indicated that he had terminated their relationship due to their political disagreements, and he considered Mr. X to pose a security risk to his family in Libya. Applicant did not disclose on his QNSP several

⁴Applicant is sufficiently known within the international community to speak at conferences about Libya and to be asked by U.S. and international media for information about Libya. (Tr. 74-77, 93-96.) As recently as May 2011, he was receiving email messages for information about the uprising in Libya. He chose not to respond. (Tr. 96.)

⁵Applicant resigned from the NGO in June 2005 because of concern over the intentions of some of the persons (including Mr. X) involved in the NGO. (Tr. 84.)

⁶Applicant was apparently harassed online by Libyan natives who were attempting to discredit him. He suspects Mr. X was involved. Applicant had daily discussions with Mr. X via phone or email about politics and life in Libya between February and August 2006. Mr. X claimed he had met with Colonel Qadhafi's son in September 2005. Mr. X told Applicant that during this meeting, Qadhafi's son asked specifically about Applicant and Applicant's activities. Mr. X was reportedly promised a position with the Libyan government. (Tr. 67, 70-71.) Applicant has not had any contact with Mr. X since August 2006, although Mr. X left him a voicemail in 2007 and Applicant tried to call him several times in December 2010. (Tr. 71.)

significant foreign contacts, including with the Libyan-American whom he believed was disloyal to the United States and worked for the Qadhafi regime in the United States. (GE 1.) Applicant was apparently granted an interim secret clearance shortly thereafter. (Tr. 46-47.)

In a December 29, 2008 affidavit presented to an Office of Personnel Management (OPM) special agent, Applicant detailed his contacts to date with his relatives in Libya and a sister in Egypt, and with other foreign nationals or U.S. citizens with ties to Libya, including several not previously listed on his QNSP. Applicant indicated that he suspected several of them to be agents of, or acting for, the Qadhafi regime, but none of them were aware of the details of his work or his clearance status. Applicant asserted that he was "absolutely loyal" to the United States, where he had continuously resided since 1978. (GE 2.)

Applicant's mother died in 1999. (Tr. 44.) Applicant's brother #1 left behind a spouse and seven children (four daughters and three sons), who are now between the ages of 23 and 40. All are resident citizens of Libya, although they apparently had to flee their home because of brother #1's political activities. (GE 1, 2, 4). Applicant has sporadic telephone contact with brother #1's spouse, who does not work outside the home. She shares a home with Applicant's brother #3 and his family. As of December 2008, five of brother #1's children were still at home. The second eldest daughter is an unemployed civil engineering graduate. Three children are students, pursuing business, industrial engineering, and computer degrees. Brother #1's oldest son works as a computer technician. The elder of brother #1's two married daughters is employed in a civilian water project owned by the Libyan government. The other daughter does not work outside the home. Applicant has only sporadic contact with brother #1's oldest son and youngest daughter. He has occasional telephone contact with his other nieces and nephews. After his brother's imprisonment in Libya, Applicant began sending brother #1's family in Libya \$4,000 to \$5,000 per year to cover their living expenses. He sent \$1,000 in the summer of 2008. (GE 1, 2.) After the conflict began in Libya, he sent only \$450 in April 2011 to his deceased brother's family. He denied a subsequent request from them for more funds because he told DOHA he would not send them any money in the near future. (Tr. 35, 57-58.)

In 2007, Applicant vouched for his brother #1's second daughter (the civil engineering graduate) and second son (industrial engineering student) to come to the United States for medical treatment for his niece. (Tr. 36, 78.) His niece and nephew stayed with him from August 2007 to November 2007, and were here when he began working for his current employer. Applicant informed his nephew that he worked on a U.S. military base, but he did not discuss the particulars of his work. (Tr. 78-79.) In March 2008, after visiting his father in the Libyan prison, Applicant's nephew was harshly interrogated by Libyan security about his visit to the United States and his contacts with the U.S. State Department and Congress. As of December 2008, Applicant's nephew was banned from leaving Libya. (GE 2; Tr. 79.) Applicant was asked by his family about gaining political asylum for his nephew in the United States. With help from the U.S. State Department, the paperwork was prepared, but Applicant's

nephew then declined to leave Libya. (Tr. 100-01.) Applicant contacted his brother's family in Libya from his office at the military base. While he suspected that his family's phone lines were monitored by the Libyan authorities, he did not think there would be a problem because he used a telephone card. (Tr. 80.)

Applicant's eldest sister is a Libyan citizen who owns a pharmacy in Egypt. She has homes in Egypt and in Libya, and she spends her time between the two countries. (Tr. 31.) Her spouse, a dual citizen of Libya and Egypt, has chosen to live in Libya since 1990. He is a retired teacher with no known ties to the Libyan government. Applicant has regular contact with his sister, including daily at times. She cared for him when he was younger, and she is very supportive of him. (Tr. 48-50.) The younger of Applicant's sons visited Applicant's sister #1 in Egypt for 17 days in March 2007. Applicant planned to travel to Egypt to see his sister in December 2009, but he was dissuaded from doing by his sister and some Egyptian-Americans and Libyan-Americans, who told him he could be targeted. (Tr. 91.) Applicant has sporadic contact with his sister's spouse. Sister #1's four daughters were born in Libya, but live in Egypt. They range in age from 30 to 37. Two of the daughters hold dual citizenship with Libya and Egypt, while the others are citizens only of Egypt. The oldest daughter works as a pharmacist. Daughter #2 is a physician in Egypt married to another doctor, whom Applicant has never met. Daughter #3 works as a pharmacy technician, and she also married a physician. Applicant had several telephone conversations with his niece's husband in 2007 because he met Applicant's son at the airport. As of December 2008, the youngest of sister #1's daughters was working as a dentist in Egypt, although her husband was studying physics abroad. Applicant has minimal contact with the two elder nieces and sporadic contact with his younger nieces. (GE 1, 2.)

Applicant's brother #2 is a resident citizen of Libya, who worked until the recent uprising as a mechanical engineer for an oil company partially owned by the Libyan government. Applicant has had monthly contact with his brother during recent years. They spoke in June 2011. He told his brother where he works. (GE 2; Tr. 51-53.) They met in person in the United Kingdom after not seeing one another for 19 years. His brother, who has been a Pan-Arab supporter, was reluctant to speak out against the Qadhafi regime in Libya because he had lived in government housing until March 2011, when he and his family were forced to evacuate in the middle of the night. Applicant had helped his brother get an article published in February 2011 about their brother #1 and the anti-Qadhafi uprising. (GE 4; Tr. 38-40.) Brother #2's wife is an Egyptian native citizen who does not work outside the home. Applicant spoke to her three times in 2008. Brother #2 has seven children ranging in age from 16 to 34. They all reside in Libya, although two of the children were born in the United States. Brother #2's second son was employed by the same oil company as his father. Applicant is unaware of the employments of the other adult children and he has little to no contact with them. (GE 1, 2.)

Applicant's brother #3 was educated as a lawyer, but he worked for another Libyan government-owned oil company in the past. He has been disabled since suffering a stroke in 2005. Applicant talked to him once in 2004 and then in 2009. (Tr.

52.) Brother #3, his spouse, and their four adult children (three daughters and one son) are all resident citizens of Libya. The two older daughters are both physicians. Applicant has spoken to these nieces no more than twice and not since 2005. Applicant has had no contact with the third daughter and knows nothing about her occupation. Applicant's nephew was in medical school as of December 2008, and Applicant spoke with him once monthly or less in 2007 and 2008 about medical school admissions and life in the United States. This nephew asked Applicant about his job on one occasion, although Applicant declined to discuss it. (GE 1, 2.)

Applicant's sister #2, her husband, and their six sons, are all citizens of Libya. Sister #2 works as a schoolteacher while her spouse is an administrative judge. (Tr. 58.) Sister #2's oldest son is a pharmacist who was studying English in the United States as of December 2008. Applicant spoke to this nephew once in 2007 and 2008. Applicant understands that his sister's second son works for a U.S. company in Libya. He has had no contact with this nephew. Applicant knows nothing of his sister's third and fourth sons other than that they live with his sister. The fifth son is a student still at home. In 2008, sister #2 asked Applicant for a reference for her youngest son (born in 1992) so that he could gain admission to a service academy in Egypt. After several conversations between Applicant and the school's registrar on his nephew's behalf, Applicant informed his sister that his nephew had missed the deadline to register. Angry at Applicant, Applicant's nephew accused him of causing problems for the family because of his political attitude. According to Applicant, his nephew, "knowing that the phone line was likely tapped," called a cousin (a son of brother #2) and claimed that Applicant had caused trouble for him by calling the Libyan embassy in Egypt and voicing opposition to the Qadhafi regime. Applicant terminated his contacts with his sister and her family from October 2008 until February 2011 because of the incident and his nephew's aspirations to join Libyan security. (GE 1, 2; Tr. 32-33, 81-82.) During the recent civil unrest in Libya, Applicant felt it was appropriate to resume contact with his nephew to check on his relatives' well-being. He has not spoken to his sister or her spouse since October 2008. (Tr. 33, 50, 59.)

Applicant denies that any of his extensive foreign contacts have attempted to solicit U.S. classified information from him, or that there is anything in his life or background that could cause him to be vulnerable to exploitation, manipulation, duress, or blackmail. He resisted pressures from the Libyan government to cooperate in return for easing threats on his family in Libya. (GE 2; Tr. 41-42.) Applicant told sister #1 that he had to terminate his contact with sister #2 (who is married to the Libyan judge) because of the sensitive nature of his work. (Tr. 60-61.)

Applicant has contacted Libyans and Libyan-Americans for information that he can pass on to journalists, but he began to cut off contacts in March 2011. (GE 2; Tr. 94-95.) As recently as February 2011, Applicant was still in contact with a Libyan native U.S. citizen, who had been involved with him in the pro-Arab organization in college. Applicant subsequently learned that this Libyan native was an official in Libya's transitional government. Applicant plans no future contact with him or with another of his former associates from the Arab organization who had returned to Libya. (Tr. 86-87.)

Applicant does not intend to travel to the Middle East, including Libya, in the near future. Should he decide to travel to see his relatives, he will inform the U.S. government of his plans. (Tr. 98-99.) He would like to resume sending financial support to brother #1's family if the U.S. government approves. (Tr. 101-02.) Applicant has no financial assets in Libya. (GE 1; Tr. 44.)

After considering official U.S. government publications and statements about historical and recent events in Libya and its international relations, I took administrative notice of the following pertinent facts:

The Great Socialist People's Libyan Arab Jamahiriya (Libya) was an authoritarian state under the de facto rule of Colonel Mu'ammar al-Qadhafi from 1969 until 2011. While Qadhafi gave up his office as head-of-state in 1980, he continued to exercise power through a small cadre of trusted advisors. An abortive coup attempt in May 1984, led by Libyan exiles with internal support, led to a short-lived reign of terror in which thousands were imprisoned, and unknown numbers were executed. Qadhafi's confrontational policies and terrorism against western interests in the 1980s (e.g., Berlin discotheque and Pam Am Flight 103 bombings) led to unilateral military action and economic sanctions by the United States, and in 1992, to United Nations sanctions. Refusal of the Qadhafi regime to comply with UNSC resolutions led to Libya's political and economic isolation for most of the decade. In October 1993, Qadhafi's security forces launched a pre-emptive strike at alleged coup plotters within the Libyan military. Widespread arrests followed, accompanied by public "confessions" from regime opponents and alleged torture and execution. Periodic purges of the military led to the elimination of potential rivals to Qadhafi's control.

U.N. and U.S. sanctions were lifted in 2003 and 2004, after Libya took responsibility for the actions of its officials and paid compensation to Lockerbie's victims' families. The Qadhafi regime's cooperation with the United States and international organizations on weapons of mass destruction led to a lessening of tension between the United States and Libya. U.S. persons were no longer prohibited from working in Libya, and many American companies sought to invest in Libya. In May 2006, the United States reopened its embassy in Tripoli, and on June 30, 2006, the United States rescinded its designation of Libya as a state sponsor of terrorism. U.S.-Libyan relations were fully normalized in January 2009, providing opportunities for progress on counterterrorism, nonproliferation, trade and investment, and human rights issues.

Although Libya's relations improved with the West, serious human rights abuses persisted in Libya. Citizens still did not have the right to change their government. Continuing problems included reported disappearances, torture, arbitrary arrest and imprisonment; lengthy pretrial and sometimes incommunicado detention; official impunity; poor prison conditions; denial of fair public trial; political imprisonment with harassment or intimidation of detainees without formal charges; and lack of judicial recourse for human rights violations. The Libyan government significantly restricted the media, freedom of speech, association, and the exercise of civil liberties. It maintained

an extensive security apparatus that monitored and controlled the activities and everyday lives of its citizens.

On February 15, 2011, the Libyan people began peaceful protests for regime change. The Qadhafi regime responded in a brutal suppression, using weapons of war against its own people. The United States suspended diplomatic relations and imposed sanctions on Libya. Libya stepped up its violence, contrary to the demands of the international community. On February 26, 2011, the UNSC passed UNSCR 1970, which called for a referral to the International Criminal Court, an arms embargo, a travel ban, an asset freeze, and sanctions. On February 27, 2011, the Libyan opposition formed a Transnational National Council (TNC) with the expressed goal of removing Qadhafi from power and establishing a unified, democratic, and free Libya that respects universal human rights principles.

On March 17, 2011, the UNSC adopted UNSCR 1973, which authorized member states to take military action to protect civilians under attack. Under NATO's control, a coalition of U.S., European, and Arab allies acted militarily to protect the Libyan people and enforce UNSCR 1970 and 1973. By May 2011, there were increased calls from the international community for an end to the Qadhafi regime. On July 15, 2011, the Obama Administration recognized the TNC as the interim legitimate governing authority for Libya, and U.S. embassy operations resumed in Libya on September 22, 2011, although the U.S. State Department continued to warn U.S. citizens against all but essential travel to Libya due to ongoing unrest. Following the death of Colonel Qadhafi, Libya declared its liberation on October 23, 2011. The Obama Administration expressed its intent to work with the TNC and an empowered transitional government toward a stable political transition with free and fair elections in Libya. Effective October 31, 2011, the UNSC in UNSCR 2016 terminated the protection of civilians and no-fly authorizations established in UNSCR 1973. The United States provided humanitarian assistance to Libya at the request of the TNC by transporting wounded Libyans to the United States for treatment in late October 2011.

According to the U.S. State Department, as of November 18, 2011, various militias have supplanted the police in maintaining internal security in Libya. Militia members operate checkpoints within and between major cities. Libyan militia members are poorly trained and loosely affiliated with the interim government. In some instances, militias have made arrests on scant evidence and held detainees in substandard conditions. Extremist groups continue to plan terrorist attacks against U.S. interests in the Middle East region, although there have been no recent instances in which U.S. facilities or citizens in Libya have been targets of terrorist attacks.⁷

⁷After my Order of November 1, 2011, notifying the parties of my intent to take administrative notice of timely facts pertinent to Libya and its foreign relations, the U.S. State Department issued an updated *Country Specific Information* on November 18, 2011. The document was reviewed in assessing the current conditions in Libya.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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. 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 to obtain 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 that the applicant may deliberately or inadvertently fail to 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B—Foreign Influence

The security concerns about foreign influence are set out in AG ¶ 6:

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.

The security concerns underlying 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,” are established. Applicant has no fewer than 30 family members (siblings, siblings’ spouses, nieces and nephews) living in Libya. The elder of his two sisters divides her time between Egypt and Libya, where her spouse has chosen to live. Applicant understandably has closer ties of affection to some of his relatives other others, such as sister #1 to whom he speaks on a daily basis. After his brother #1 was imprisoned in Libya in October 2002 for publicly advocating reform, Applicant lobbied the U.S. government for help in securing his release.⁸ Applicant also began supporting his brother’s family, sending them \$4,000 to \$5,000 a year. He stopped his financial support after April 2011, but only in response to DOHA’s concerns and not because of a lessening of his personal bonds to his brother’s family. In 2007, Applicant vouched with the U.S. State Department for his brother #1’s second daughter (the civil engineering graduate) and second son (industrial engineering student) to come to the United States for medical treatment for his niece. After his nephew was harshly interrogated on his return to Libya, Applicant pursued political asylum for his nephew in the United States.

Also, Applicant contacts brother #2 on a monthly basis. Concerning sister #2 and her family, Applicant had relatively close relations with them until October 2008. At the request of his sister, Applicant provided a reference for his nephew for admission to an Egyptian military academy. Applicant cut off ties after his nephew accused him of voicing anti-Qadhafi sentiments to the Libyan embassy, and because of his nephew’s

⁸With brother #1’s death, Applicant can no longer be induced or manipulated to help him. Guideline B security concerns nonetheless persist to the extent that Applicant’s vulnerability to pressure or coercion is heightened because of his efforts on his part to ensure accurate reporting about brother #1’s reputation and activities before his death. He helped brother #2 publish the article about their brother’s ultimate sacrifice.

aspirations to join Libyan security forces. However, when legitimate opposition to Qadhafi surfaced in Libya, Applicant contacted his nephew in February 2011.

Furthermore, through his attendance at conferences about the political situation in Libya in October 2002 and April 2003, his position on the board of the NGO until June 2005, his advocacy for his brother's release, and his public statements for reform in Libya, Applicant has had numerous contacts with several foreign nationals, including some Libyans and Libyan-Americans suspected or known to be involved with the Qadhafi regime. In December 2005, Applicant was asked to help "launder" the image of the Qadhafi regime in return for his brother's possible release. Between the fall of 2006 and June 2007, a Libyan citizen residing in the United States made threatening statements to Applicant. As recently as December 2010, Applicant attempted to contact Mr. X, whom he suspected of being behind some harassing emails. As of February 2011, Applicant was still reaching out to Libyans and Libyan-Americans for information that he could pass on to the media. His contacts included an old college associate from the pro-Arab organization. Applicant understands that this Libyan-American is a prominent member of the opposition in Libya. The Government's case for AG ¶ 7(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," is also established. AG ¶ 7(h), "indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion," applies, given Applicant had been directly approached in the past about cooperating with the Qadhafi regime and been harassed for his positions on Libya.

Applicant admits that he had contact through the U.S.-based NGO with at least one possible "spy" for the Qadhafi regime. (Tr. 68.) In his favor, Applicant terminated his association with the NGO in June 2005 because of doubts about this Libyan-American's intentions. In late 2005 or early 2006, Applicant apparently contacted the FBI and reported his suspicions that the Libyan-American was a foreign agent for Libya. (GE 2.) However, the Government's case for AG ¶ 7(g), "unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service," falls short in the absence of clear evidence that Applicant continued his association with this person after he had reason to suspect a foreign intelligence tie or after he had informed the FBI of his suspicions. Although Applicant suspected Mr. X of being involved with, or manipulated by, the Qadhafi regime, Applicant's contacts with him are more aptly covered under AG ¶¶ 7(a) and 7(b). The record does not show that Mr. X was associated with a foreign intelligence service. Instead, the evidence suggests that he may be more of an opportunist, who was willing to strike deals with Qadhafi in exchange for some reforms.⁹

⁹When asked whether Mr. X was a dissident who made accommodations with the Qadhafi regime, Applicant responded:

You know I mean he's a politician. I don't know all the exact details about his dealings

Mitigating condition AG ¶ 8(a) is difficult to satisfy in this case, given the closeness of Applicant's family ties in Libya; his brother #1's outspoken calls for reform and regime change in Libya before his death, which led to his family being targeted within Libya; and Applicant's own advocacy for his brother #1 and for reform in Libya. AG ¶ 8(a) states as follows:

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.

Applicant's nephew was harshly interrogated in 2007 after he returned from a stay with Applicant in the United States. Applicant was approached by the Qadhafi regime to "launder" its image abroad. Applicant is sufficiently known within the international community to have been asked to speak at conferences about Libya, and to have been asked by U.S. and international media for information about Libya. The regime change in Libya to a transitional authority promising a unified, democratic, and free Libya is supported by the United States, but that alone does not fully minimize the risk of undue foreign influence. Libya is in a transition phase to a new government. Militia groups have supplanted the police in maintaining internal security. They are only loosely affiliated with the interim government, and in some cases, militias have made arrests on dubious evidence. There is no guarantee that elements in Libya previously loyal to Qadhafi will respect human rights principles and not attempt to subvert a smooth, democratic transition.

Applicant's vulnerability to undue foreign influence may nonetheless be mitigated by deep and longstanding relationships and loyalties in the United States. See 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 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.

Applicant came to the United States on a student visa in 1978, and he voluntarily became a U.S. citizen in 1990. He has no financial assets in Libya, while he owns a home in the United States. However, other than his younger son, who lives with Applicant's ex-wife in the United States, Applicant's closest personal relationship is with his sister #1, whom he calls on a daily basis. Despite his longtime residency here, and

with the regime. Some people say that he gained money; some people say no he didn't. I don't know. This is detail that I really don't know what's going on about it. But now he's openly opposing the regime and some people say that he was instrumental in the current uprising against the regime. I don't know. (Tr. 88.)

his U.S. citizenship, he continued to demonstrate a commitment to his relatives in Libya and to reform in Libya. While the record is replete with information about his foreign contacts, there is little in the record about his ties to his community or persons in the United States.

Applicant held an Arab-leaning point of view when he was in college. He testified credibly that he had to “work hard to let go of these thoughts.” (Tr. 64.) There is nothing in the record that suggests Applicant’s present affinity or loyalty is to a country other than the United States. Consistent with his U.S. citizenship, he apparently reported to U.S. officials some of the attempts at undue foreign influence against his relatives in Libya and against him in the United States. To the extent that AG ¶ 8(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,” can be credibly asserted in mitigation, it is noted that Applicant did not reveal some significant foreign contacts on his QNSP, including his meetings with the Libyan-American who served in the Qadhafi government and asked Applicant to “launder” the image of the Qadhafi regime, or the threats at the hands of a Libyan national in 2006 and 2007. Although Applicant assumed a lower profile in disseminating information about Libya since the February 2011 uprising, and he feels safe in the United States, it is not enough to overcome the substantial foreign influence concerns at this time.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).¹⁰

With the political imprisonment and death of brother #1, Applicant’s family paid the ultimate price for wanting a better life for themselves and other Libyans. Brother #2 lost his home and work when his family had to flee their home around March 2011 during the recent uprising in Libya. To his credit, Applicant did what he could to support his family from afar by advocating for brother #1’s release through U.S. government channels, at conferences held in the United States and abroad, as well as in written publications. He supported brother #1’s family financially. At the same time, these efforts led to contacts with persons, including some affiliated with, or supportive of, the Qadhafi regime, whose interests were often inimical to the United States and democratic values. For the most part, Applicant dealt with threats against himself and

¹⁰ The factors under AG ¶ 2(a) are as follows:

- (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.

his family appropriately by reporting them to U.S. authorities, but he also exhibited questionable judgment at times. Applicant maintained regular contact with Mr. X in the fall of 2006 despite concerns about Mr. X's intentions as early as June 2005, if not before. Applicant met with Mr. X and the Libyan-American, who pressed him to cooperate with the Qadhafi regime. Applicant called family members in Libya from his work phone on the military base, aware that his family's lines in Libya were probably tapped. Applicant may have the best of intentions, but there is a substantial risk that he may again be placed in a position of having to choose between the interests of his family in Libya and the interests of the United States.

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
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
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.

Elizabeth M. Matchinski
Administrative Judge