



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



In the matter of:)
)
) ISCR Case No. 11-06421
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

08/15/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant failed to mitigate the foreign influence concerns raised by his relationships with family members who are citizens and residents of Saudi Arabia – in particular, his father who is a general officer in the Saudi military. Furthermore, Applicant’s exercise of his Saudi citizenship, in the form of accepting sizable education benefits, indicates a foreign preference, which Applicant also failed to mitigate. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 12, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Reasons (SOR) detailing the security concerns under the foreign influence and foreign preference guidelines. DOHA recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

Applicant, through counsel, timely answered the SOR and requested a hearing. The case was assigned to me on April 3, 2012. The hearing took place as scheduled on May 10, 2012. Government's Exhibits (GE) 1 through 4 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through K, which were also admitted without objection. At Applicant's request, I left the record open until May 18, 2012 to allow him to submit additional documentation. He timely submitted AE L and M, which were admitted without objection. I received the transcript (Tr.) on May 18, 2012.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Saudi Arabia. Without objection from Applicant, I approved the request. The request and the attached documents have been included in the record as Hearing Exhibit (HE) 1. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 31-year-old U.S. citizen by birth. He is also a citizen of the Kingdom of Saudi Arabia. He is a software engineer employed by a federal contractor. In 2007, Applicant was granted a public trust position. He applied for access to classified information in 2010.²

Raised in Saudi Arabia, Applicant returned to the United States in 2000 to attend college. He received his undergraduate and graduate degrees from U.S. universities and is currently enrolled in a post-graduate program. As a citizen of Saudi Arabia, Applicant's education has been paid for by the Saudi Arabian government. After entering college in 2001, he received the maximum ten years of benefits provided to Saudi citizens, including tuition, health insurance, and a monthly stipend to cover living expenses. His education benefits expired in May 2012.³

Applicant married in October 2010. His wife is a citizen of Saudi Arabia living in the United States on a student visa. She is pursuing an undergraduate degree and is receiving the same education benefits from the Saudi government as Applicant. The couple is expecting their first child the summer of 2012.⁴

Applicant's parents, sister, and four brothers are citizens of Saudi Arabia. All except one brother, who is studying in the United Kingdom, are also residents of Saudi Arabia. Applicant's father is a general officer in the Saudi military. His mother is a

² Tr. 70; GE 1.

³ Tr. 25-28, 70-71.

⁴ Tr. 28-29, 68.

housewife. Applicant's sister, a minor, and two of his younger brothers, both college students, reside with his parents. His eldest brother, who is also a dual U.S. citizen, is a civilian employee of a Saudi military department. Applicant's parents, his sister, and two younger brothers travel to the United States once or twice a year for two or three months, staying with Applicant. Since returning in the United States in 2000, Applicant has traveled to Saudi Arabia annually, entering the country using his Saudi passport. Outside of their visits, Applicant speaks to his parents every other week by telephone. He communicates with his siblings through email or a popular social networking site.⁵

When Applicant's father retires, his parents, sister, and his two younger brothers plan to immigrate to the United States. Applicant's father has been planning and preparing the family to do so for years. In 2009 Applicant's father gave Applicant \$300,000 towards the purchase of a home. Although the house is currently occupied by Applicant and his wife, his father plans to live there when he immigrates to the United States. To establish a presence in the United States, Applicant's father has a driver's license issued by the state where the home is located, a U.S. bank account, and a few U.S.-issued credit cards. He is also making arrangements for Applicant's oldest brother to transfer his civilian job with the Saudi military to a location in the United States. Although Applicant's father is eligible for retirement, he has not yet been given permission to retire. Once retired, he will receive a pension from the Saudi government.⁶

In addition to his immediate family, Applicant's parents-in-law and two of his friends are citizens of Saudi Arabia. Applicant's father-in-law is an airline pilot and his mother-in-law is a housewife. Outside his annual visits to Saudi Arabia and occasional visits to the United States by his parents-in-law, Applicant does not maintain regular contact with them. However, they do plan to visit after their grandchild is born. One of Applicant's friends is a civilian employee of the Saudi government in a U.S. city. Through him, Applicant met his other friend, who is a flight attendant. Applicant sees these friends four times a year and they occasionally exchange e-mails.⁷

Applicant plans to stay in the United States. In February 2012, he surrendered his Saudi passport to his facility security officer (FSO). In May 2012, he destroyed the document in the FSO's presence. With his father's encouragement, in 2010, Applicant contacted a Navy recruiter about joining the U.S. Navy Reserve; however, he decided to complete his post-doctoral studies before doing so.⁸

At hearing, Applicant offered several character letters from friends and co-workers. He is highly regarded by all as a person of upstanding character and integrity. Two letters came from Applicant's co-workers, who have known Applicant's father for

⁵ Tr. 29-33, 40, 50-52, 57-58; AE F, H.

⁶ Tr. 30, 35, 55-56, 64-66; AE B, J.

⁷ Tr. 35-37, 59-60, 61-64.

⁸ Tr. 45-46; AE C, D.

over 20 years through their work supporting contracts with the Saudi Arabian military. Both describe Applicant's father as being very supportive of U.S. initiatives and policies.⁹

Saudi Arabia¹⁰

The central institution of the Saudi Arabian government is the monarchy ruled by the Al Saud family and a king chosen by and from the family; the king rules through royal decrees. Islamic law is the basis for the authority of the country's conservative customs and social practices. Despite generally good relations, the United States remains concerned about human rights conditions in Saudi Arabia. The United States and Saudi Arabia share a common concern about regional security, oil exports and imports, and sustainable development. However, Saudi Arabia's relations with the United States were strained after the September 11, 2001 terrorist attacks.

During 2003 and 2004, terrorists and suicide bombers kidnapped or killed Americans and attacked the U.S. consulate in Jeddah, killing five consulate employees. A travel warning is in effect for Saudi Arabia due to concerns about the possibility of terrorist activity directed against American citizens and interests. Individuals and organizations based in Saudi Arabia have been designated by the U.S. Government as providing financial and material support to Al-Qaeda and other terrorist groups. Saudi and U.S. officials appear confident that Al-Qaeda's capability to launch attacks inside the Kingdom has been seriously degraded. The Saudi government continues to build its counterterrorism capacity and efforts to counter extremist ideology. On March 24, 2010, Saudi officials announced that since November 2009, the Saudi government has arrested more than 100 Al-Qaeda suspects accused of planning attacks against the government and oil installations. On November 26, 2010, Saudi officials announced that 149 Al-Qaeda suspects had been arrested since April; the suspects were planning to poison Saudi officials and journalists, and to finance terror operations by robbing banks and companies.

Policies

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables

⁹ AE K.

¹⁰ HE 1.

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.

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline 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.”¹¹

AG ¶ 7 indicates three conditions that are 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

¹¹ AG ¶ 6.

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.

Applicant's wife, parents, siblings, parents-in-law, and two friends are citizens of Saudi Arabia. The mere possession of close ties with foreign family members or friends is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one person 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.

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 or friends 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 or friend is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. However, this inquiry is not limited to countries hostile to the United States. Friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.

Despite the long-standing and historically-positive relationship between Saudi Arabia and the United States, a heightened risk exists. Terrorist organizations operating within the Kingdom routinely target American citizens and interests. Furthermore, Applicant's wife, oldest brother, and in particularly his father have significant connections to the Saudi government, which increases the vulnerability of Applicant and his family members to government coercion or inducement. The Government presented sufficient evidence to establish that Applicant's ties with citizens of Saudi Arabia are disqualifying thereby shifting the burden to Applicant to present evidence in mitigation and extenuation that he qualifies for access to classified information. He failed to do so.

Accordingly, none of the mitigating conditions available under AG ¶ 8 apply. While Applicant's relationships with his two friends who are citizens of Saudi Arabia can be described as casual and infrequent, his familial relationships cannot. Although not disqualifying, Applicant's annual travel to Saudi Arabia to visit his family and his joint purchase of a house with his parents shows the strength of these bonds. They are a close knit family organized around Applicant's father who determines the direction of the family, including its adult members. This risk is not mitigated by his family's plan to immigrate to the United States. While they may live on U.S. soil in the future, their ties

to the Saudi government will remain. His father will receive a pension from the Saudi government. Applicant's wife, his siblings, and presumably his child will be eligible for the educational benefits available to Saudi citizens creating additional ties to the Saudi government.

In light of his family's connection to and reliance upon the government of Saudi Arabia, Applicant failed to meet his burden showing there is little likelihood that these foreign relationships could create a risk of foreign influence or exploitation or that they do not create potential conflict of interest. While there is no evidence that the government of Saudi Arabia or terrorists operating within the Kingdom seeks or has sought classified or economic information from or through Applicant, or his relatives, it is not possible to rule out such a possibility in the future. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Saudi Arabia who might be coerced by terrorists or other governmental entities in that country.

Guideline C, Foreign Preference

As described in AG ¶ 9, a security concern may arise under the following circumstances:

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.

The following disqualifying condition under AG ¶ 10 applies to this 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.

Applicant held and used a Saudi Arabian passport until February 2012. He also accepted educational, health, and subsistence benefits from the Saudi Arabian government for ten years.

One of the mitigating conditions available under AG ¶ 11 applies:

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

In February 2009, Applicant surrendered his passport to his FSO. Three months later, the FSO witnessed Applicant's destruction of the document. However, this does not mitigate the overall foreign preference concern. Between 2001 and May 2012, Applicant accepted the maximum amount of educational and related benefits available to him from the Saudi government. Applicant continues to experience the financial benefit of this entitlement program as his wife is currently receiving the same benefit to

pay for her education. The negative security significance of acts indicative of a foreign preference is not negated or diminished merely because an applicant engages in those acts for personal reasons.¹² Nor is the security significance of Applicant's exercise of his rights as a citizen of Saudi Arabia mitigated by his ignorance of negative security concerns raised by his accepting the educational assistance to which he was entitled. The absence of any sinister motive on Applicant's part does not negate or reduce the negative security significance of his conduct.¹³

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is talented, hardworking, and possesses good character and integrity. However, this finding does not preclude a finding that Applicant's facts and circumstances still pose a security risk. Stated otherwise, the Government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control – such as having close relatives who are citizens or residents of foreign countries.¹⁴ Applicant's familial relationships with individuals directly connected to the Saudi government represent an unacceptable risk. Clearance is denied.

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.h:	Against Applicant
Subparagraphs 1.i. – 1.l.	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a	For Applicant
Subparagraph 2.b:	Against Applicant

¹² ISCR Case No. 99-0295 at 6.

¹³ ISCR Case No. 99-0511 at 9-10 (App. Bd. Dec. 19, 2000).

¹⁴ ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); *See also Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988).

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.

Nichole L. Noel
Administrative Judge