



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05030

Appearances

For Government:
Andrew H. Henderson, Esquire
Department Counsel

For Applicant:
Cathryn E. Young, Esquire
Griffith, Young & Lass

March 23, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on November 18, 2011. (Government Exhibit 1.) On October 29, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines E (Personal Conduct) and B (Foreign Influence). 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 for Determining Eligibility for Access to Classified Information, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on December 22, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 13, 2016. The case was assigned to me on May 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 17, 2016. I convened the hearing as scheduled on June 30, 2016. The Government offered Government Exhibits 1 through 14, which were admitted without objection. Applicant offered Applicant Exhibits A through K, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on July 11, 2016.

Findings of Fact

Applicant is 53 years old, and married with four children. He has a master's degree and is employed by a defense contractor. Applicant currently holds a security clearance and wishes to retain it. He first received a security clearance in 1987.

Applicant was born in Lebanon in 1962. His parents are by descent Palestinian, and were both born in what is now Israel. Applicant's father is deceased. In 1975 Applicant's family acquired Jordanian citizenship. Applicant and his family all eventually moved to the United States in approximately 1979. Applicant became a naturalized American citizen in 1986. His parents, sister, and two brothers also became naturalized American citizens. Applicant's wife and children are all native-born American citizens. (Tr. 34-36; Government Exhibit 1 at Sections 1-4, 9, 10, and 18.)

Paragraph 1 (Guideline E – Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant admitted in part and denied in part allegation 1.a. Applicant denied allegations 1.b and 1.c in their entirety.

(1)

Subparagraphs 1.a and 1.b of the SOR concern Applicant's relationship with a Mr. X, and whether Applicant has been honest with the Government about that relationship. Applicant has lived in the same metropolitan area for approximately 30 years. He is Muslim, and in 1995 he joined Organization One (Org. One). This is a non-profit society providing religious and other services for members of Applicant's faith community. From 2004 through mid-2009 Applicant was president of Org One. (Tr. 70-75; Government Exhibit 12.)

In approximately 2004 Applicant became acquainted with Mr. X, who occasionally attended religious services held by Org. One. Applicant did not have a close relationship with Mr. X. In December 2007 or January 2008 the board of directors of Org. One hired Mr. X as a contractor to perform religious services. Mr. X worked for Org. One until approximately August 2008. During that eight month period of time Applicant would have monthly contact with Mr. X, mainly in a supervisory role. (Tr. 75-80.)

Applicant testified:

In July 2008, one of the members of the operational board then, the executive committee, he said this gentleman [Mr. X] may be facing some federal charges. And I told him, do you know what the situation is? He [board member] said he does not know what it is. (Tr. 82.)

Applicant spoke with Mr. X, who confirmed that he was facing Federal charges, though he did not inform Applicant of the nature of the charges. Based on the facts he knew at that time, Applicant terminated the contract with Mr. X. Applicant had no further contact with Mr. X after terminating his employment. (Tr. 82-85.)

Mr. X was subsequently convicted in a United States District Court located in a different state of "Conspiracy to Provide Material Support to a Foreign Terrorist Organization." In May 2009 he was sentenced to fifteen years in prison. (Government Exhibits 6 and 7.)

With regard to his knowledge of the case concerning Mr. X, Applicant stated:

Later on, as a result of his trial hearings, when it became publicized across the news media and every outlet almost carried something on this trial, and this is how I learned about it, learned about some of the nature of the charges.

And quite frankly, I did not even know what it ended up to be his charges in fact until [Department Counsel] submitted the Government exhibit [7] that shows what basically he was being tried for and what were the sentences and all that stuff. (Tr. 85.)

As stated, Applicant filled out a Government questionnaire on November 18, 2011. (Government Exhibit 1.) Section 29 asks about Applicant's "Association Record." One subsection entitled "Associations" reads, "Have you **EVER** associated with anyone involved in activities to further terrorism?" (All emphasis in original.) Applicant answered, "No." He made an optional comment:

I understood the above question as have I ever knowingly associated with a person who is known to be involved in activities to further terrorism. I do not know if the information below is relevant to the question above. I had

one non-profit volunteer/and business association with a person who was initially accused of (non-US) terrorism related charges, but was initially acquitted. Then he was subsequently retried again for the same charge in 2008, but found guilty and now in appeals. The person referred to herein provided religious services to the non-profit religious organization I was Chapter President for, as a volunteer and on a business basis.

Applicant was subsequently interviewed twice by investigators from the Office of Personnel Management. One interview was on January 4, 2012; and the other on March 26, 2013.¹ Reports of Investigation (ROI) were prepared based on these interviews. Applicant was sent a set of interrogatories concerning those ROIs. (Government Exhibit 5 and Applicant Exhibit A.) He made extensive additions and deletions to each ROI and, subject to those additions or deletions, he agreed with and adopted the ROIs as accurately reflecting the two interviews.²

The relevant portion of the January 4, 2012 interview is as follows:

Subject listed contact with a suspected terrorist on the SF86 form. Subject was the president of [Org. One]. This society is a religious organization of local Muslim adherents and they worship at a small mosque. . . . Subject volunteered his time as president from 2004 to 2008. Prior, he was a member of the society from 1995 to 2004. *Beginning in 2002 and 2003, Mr. X was hired as a religious leader at [Org. One] where he lectured and led prayers.* {Applicant struck through the foregoing sentence in its entirety, stating in a "Correction Supplement" to the interrogatories, "[Mr. X] was not hired in 2002-2003."} {With regard to the remainder of this paragraph quoted below Applicant stated in the "Correction Supplement," "Correction: this is subject's knowledge about the [Mr. X] case at the time of the interview, when asked by the investigator to describe what subject knows about [Mr. X's] case." A separate part of the "Correction Supplement" sets forth Applicant's relationship with Mr. X and will be set forth below.} In about 2005 or 2006, [Mr. X] was accused by the U.S. Federal government, agency unknown, of supporting terrorism by raising funds for [Organization Two (Org. Two)] based in the U.S.³ [Mr. X] was tried in Federal court . . . and eventually acquitted on *some of* the charges in 2007 by a Federal jury. In 2008, subject learned that he [Mr. X] had been retried on one of the *remaining*, unknown charges and convicted in Federal court. . . . He is now incarcerated in an unknown Federal prison for 15 years. Subject thinks [Mr. X] was born in Palestine.

1 The ROI concerning the January 4, 2012 interview states it occurred on "01/04/11." This is obviously in error since Applicant did not fill out his e-QIP until November 2011.

2 Where necessary, footnotes or brackets {} will be used to further describe Applicant's amendments to the ROIs. Parts of the ROIs that Applicant deleted in their entirety are shown by *italics*.

3 See Government Exhibits 6 and 8.

During 2004 to 2008, subject had contact with [Mr. X] about twice a month at the society to coordinate his schedule for lectures, prayer meetings and religious meetings. He was compensated for his religious services by the society and any funds he raised were for the local Muslim community only. He was hired by the society full time and was a full time employee for about 8 months of subject's presidency. His sermons were not detrimental to the U.S., radical in nature and he did not preach violence. Subject and other members of the society were not accused of any type of crime or terrorism by the Federal government. Subject does not advocate the violent overthrow of the U.S. government and he has never supported any organization considered terrorist by the U.S. government.

Subject has not had contact with [Mr. X] since his *arrest* in 2008 {Applicant corrected that statement in the "Correction Supplement" to mean since Mr. X's contractual work was terminated.} [Mr. X's] last official contact with [Org. One] was in 9/2008. The society and subject were not involved in his [Mr. X's] defense and subject still worships at [Org. One]. The issue with [Mr. X] is common knowledge and could not be used to blackmail subject.

The relevant portion of the March 26, 2013 interview is as follows:

In 2008, exact dates unrecalled, subject worked with [Mr. X] at [Org. One]. [Mr. X] is currently incarcerated of [sic] acts of terrorism. Subject worked with [Mr. X] for six to seven months in 2008, exact dates unrecalled. [Mr. X] provided religious services/preacher to the organization. They had monthly contact at the organizations meetings. While subject worked with [Mr. X] subject knew he was being charged with something to do with the federal government. Subject knew this because other individuals in the organization told subject. Subject did not know what exactly [Mr. X] was being charged with. After [Mr. X] left in 2008, exact dates unrecalled, individuals started saying that he had been arrested for terrorist activities. Subject does not know any details regarding [Mr. X].⁴ Subject's contact with [Mr. X] was strictly to do with matters regarding [Org. One]. They never talked about activities of terrorism. Subject does not know any individuals who engage in activities of terrorism. Subject answered "no" to the question asking about ever associating with activities to overthrow the U.S. government because when subject had contacts with [Mr. X] subject didn't know [Mr. X] was associated with terrorism. If subject would have known this subject would have never have associated with him. Subject does not associate with individuals that want to harm U.S. interests. To the best of subject's knowledge no one else at [Org. One] is associated with terrorist organization. Subject's contact with [Mr. X] is common knowledge to other

4 Applicant stated in the "Correction Supplement," "Subject does not know any details regarding [Mr. X's] trial, other than what was circulated by the Media or local community."

member[s] of the organization. Subject cannot be blackmailed, embarrassed, or coerced because of it.

As stated, Applicant made extensive revisions and corrections to the ROIs. He prepared a separate "Correction Supplement," which is attached to the interrogatories. A paragraph specifically about Mr. X is part of that supplement and is as follows:

About 2002-2007 [Mr. X] was an occasional attendant/volunteer at the Mosque. Starting about Jan/2008 [Mr. X] was hired by the Mosque Board as a religious contractor to provide Muslim religious services and worship for the community such as sermons, prayers, lectures, and to raise funds for the Mosque. At the time of [Mr. X] hire, there were no known ongoing charges against [Mr. X]. Subject as President/executive of the Mosque was to maintain general over-sight of [Mr. X's] provided services. Subject did not report to [Mr. X] and was not a co-worker of [Mr. X]. Sometime, about July/2008, subject learned that [Mr. X] may be undergoing unknown federally related charge(s). There were no known arrests of [Mr. X], during the work service period. Early Aug/2008 [Mr. X's] services were terminated.

Finally, Applicant made extensive statements in his Answer to the SOR concerning his relationship with Mr. X. Though these statements are somewhat redundant to what is set forth above, in the interest of completeness they are included as follows:

I *admit* I had a professional and non-personal work relationship with [Mr. X] briefly in 2008 when he was hired as a contractor, and which ended months before his November 24, 2008 conviction; however, I *deny* having any knowledge of [Mr. X's] pending terrorism related charges until after his contractual agreement was terminated in August 2008 through what has been circulated in local media and community. (Emphasis in original.) Prior to 2008, and while I was President of [Org. One] starting September of 2004, [Mr. X] was an occasional attendant and volunteer at the Mosque. He was not a member of [Org. One] (prayer attendance and volunteering is open to all; Muslims and non-Muslims, [Org. One] members and non-members alike). My contact with him was extremely rare and limited to casual and passer-by interaction. [Mr. X] did not hold any position or post within the Mosque. Prior to 2004, I was not an attendant of the said Mosque where [Mr. X] was an occasional attendant/volunteer, and had no contact with [Mr. X]. As presented by the facts and arguments immediately below, my contact with [Mr. X] was so infrequent and casual that it is close to if not impossible that I will be placed in a position of having to choose between foreign interests and the interests of my country, the United States.

First and foremost, I have been completely forthright regarding my contact with [Mr. X]. I have never once attempted to mislead the Government or omit pertinent information with regard to my contact with [Mr. X]. Secondly,

I have had no contact with [Mr. X] since his contractual work terminated with [Org. One] in August 2008. The first investigator's report was erroneous on the time line and it confused and placed the date of [Mr. X] hire to be in 2002 instead of 2008. The second investigator's report was more accurate in that regard, though both contained errors in regards to the nature of the contact I had with [Mr. X] which was clearly cited in my response to the follow up interrogatories.

As I disclosed to the investigators, I was a member of [Org. One] from 1995 to approximately 2013. This society is a religious educational and non-profit organization of local Muslim adherents who worship at a small mosque located [in Applicant's home town]. I volunteered my time as the Chapter President from September of 2004 to June of 2009. Around 2002 to 2007, [Mr. X] was an occasional attendant and volunteer at the Mosque. Beginning in January 2008, [Mr. X] was hired by the Mosque Board as a religious contractor to provide Muslim religious services for the community such as sermons, prayers, lectures and to raise funds for the local Mosque. In 2008, my contact with [Mr. X] was limited to twice a month or less, when available, to coordinate his schedule for lectures, prayer, and sermons. As the President and executive of the Mosque, I was to maintain general oversight of [Mr. X's] contractual services; however, [Mr. X] did not report to me nor he was [sic] a co-worker of mine. At the time of [Mr. X's] hire, there were absolutely no known ongoing charges against [Mr. X]. [Mr. X] lead sermons, lectures, and prayers for approximately less than 8 months of my Presidency. In July 2008, I learned that [Mr. X], though unconfirmed, may be undergoing unknown federal charges; however, I had no knowledge of the charges he was facing or the crimes he had committed. I was not aware of any arrests of [Mr. X] during his work service period. I monitored his religious sermons, and I can say with full confidence that none of his sermons were critique [sic] of the U.S., radical or political in nature nor did he preach violence or extreme ideology. There was absolutely no indication whatsoever from his conduct or my brief dealings with him that he was involved in terrorists' acts or supported terrorism. In early August 2008, and upon learning through direct confirmation from [Mr. X] that he was facing recent federal criminal charges, and as the President, I terminated [Mr. X's] services. I have had no contact with him since. Furthermore, I have never had or maintained any personal ties with [Mr. X] of business or social nature: he was neither a friend nor a confidant [sic] of mine. Moreover, the brief and limited business/professional interaction we had was often unsmooth, and was accompanied with lots of tension and friction due to his non-fulfillment of the terms of the contractual work as agreed upon, and lack of availability to perform the services as expected.

I have since learned through Media and local community that he was charged and convicted for terrorist acts. I am appalled by the allegations

however, I had no knowledge of his criminal conduct. Furthermore, nobody from [Org. One] that I know of was accused of being involved in any type of crime or terrorism as it related to [Mr. X]. My brief contact with [Mr. X] which was isolated to administrative work and my common knowledge of his federal conviction cannot be used to blackmail or coerce me.

The foregoing is the extent of the direct evidence concerning Applicant's relationship with Mr. X.

(2)

As part of its case, the Government introduced evidence about issues Org. One had with two banks in 2009. Org. One's accounts were closed by these banks within several months, and the organization eventually became customers of a third bank, where their accounts are still active. (Tr. 88- 94; Government Exhibit 5 at 18-19, and Exhibit 13; Applicant Exhibit B.)

Government Exhibit 13 is a document entitled "Suspicious Activity Report" from the second bank used by Org. One. It is dated in April of 2009. According to the report, as a result of the bank's investigation they identified Org. One as related to a national organization "who has ties to [Organization Three (Org. Three)], an organization that allegedly aims to create Islamic states worldwide." This document also states that the national organization of which Org. One is a part is "allegedly associated with terrorism," and that "the larger group advocated for Palestine and Hamas against Israel, and is related to [Org. Three], an alleged extremist group that seeks to establish worldwide dominance of Islam." These conclusions were evidently the result of internet searches by bank personnel. However, the record is devoid of any specifics as to websites visited and how these conclusions were reached. Based on its investigation, the bank decided to close the accounts, since they were inconsistent with bank policy.

There are two additional, important, points about Government Exhibit 13. It states, "No suspicious activity was detected in the client account, which was consistent with a violation of the Bank Secrecy Act (BSA) or other criminal statutes." The document also states, "LexisNexis, civil court and criminal history, public records and World Check searches of [Org. One], [Applicant] were conducted. No derogatory information pertaining to the clients was detected in the queries."

Applicant testified that he has general knowledge of Org. Three. He also stated that, to his knowledge, there is no connection between Org. One and Org. Three. Also worth noting is that, while there has been Congressional interest in Org. Three, it is not on the State Department's list of "Designated Foreign Terrorist Organizations."⁵ (Government Exhibits 10 and 11.)⁶

⁵ See U.S. Department of State, Bureau of Counterterrorism, *Foreign Terrorist Organizations*, <http://www.state.gov/j/ct/rils/other/des/123085.htm> (accessed Mar. 16, 2017).

⁶ See Applicant Exhibit K.

Finally, the Government submitted excerpts from a memorandum opinion in an unrelated Federal district court naturalization case. (Government Exhibit 9.) One part of this opinion concerned the relation of that plaintiff to Org. Three. In reviewing the opinion, footnote 19 at page 43 is most germane to this case and reads as follows:

Not only is there credible disagreement about whether [Org. One] and [Org. Three] are “associated,” but there is also disagreement about whether there are reasonable grounds to believe that American Muslims associated with [Org. Three] or [Org. One] in the United States are tied to extremist groups that support terrorism and acts of political violence. [Citation to case record omitted.] The Court notes, however, that [Org. One] does not appear on any publically available list of extremist or terrorist organizations compiled by the U.S. government. [Citation to case record omitted.] And that [Org. Three] does not appear on the Department of State’s list of designated Foreign Terrorist Organizations. [Citation to case record omitted.]

(3)

We now turn to subparagraph 1.c, which alleges Applicant deliberately falsified 2002 and 2011 security clearance questionnaires concerning a 1998 firearm-related charge. (Government Exhibits 2 and 1.) In Government Exhibit 2, question 22 states, “Have you ever been charged with or convicted of a firearms or explosives offense?” In Government Exhibit 1 at Section 22 the questionnaire asks, “Have you **EVER** been charged with an offense involving firearms or explosives?” (All Emphasis in original.)

The genesis of this allegation began in Applicant’s January 2012 interview:

At the end of the interview, subject wanted clarification on a question in the police section regarding charged with a crime related to firearms. (Discrepant.) In about 1998, subject was with friends . . . hunting doves. Subject was driving his pickup truck while the [friends] were in the bed and camper shell with loaded shotguns. Subject’s shotgun was not loaded. They were in an area that did not allow hunting, but it was not properly marked. On a dirt road, they were stopped by an unknown type of ranger, who charged subject with driving with loaded guns in the vehicle, a misdemeanor. They were cited and released and the shotguns were seized. Subject eventually went to the . . . Superior Court . . . and saw a judge related to the citation. He is not sure what the final charge was, but he plead guilty to a misdemeanor and the judge sentenced him to a fine of about \$70 which he paid in a lump sum to end the matter. Subject did not list the incident because he was driving and did not have a loaded gun in the car. (Government Exhibit 5 at 13-14.)

Applicant testified that he was unsure of what happened at that time legally. He did not remember if he had received a citation or a misdemeanor and what the nature of the offense was. He was accordingly unsure if he was required to report the incident. Applicant was certain he had not been detained or arrested. It was only upon being asked by the investigator if there was anything else to talk about, no matter how slight, that Applicant discussed the situation set forth above. (Tr. 63-70, 102-107; Government Exhibit 3.)

Based on Applicant's admission Government investigators subsequently attempted to obtain additional information about the incident from local law enforcement authorities. They were not successful. (Applicant Exhibit F.)

Paragraph 2 (Guideline B – Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for a security clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on his part, or make him vulnerable to pressure or coercion.

As stated, Applicant is a dual citizen of the United States and Jordan. However, Applicant has never lived in Jordan. Applicant's father obtained Jordanian citizenship for the family so they would not be stateless people as Palestinian refugees. Before moving to the United States in 1979 Applicant lived in Lebanon, and then in Qatar. (Tr. 34-36.)

Applicant's mother, sister and two brothers are dual citizens of the United States and Jordan. One brother is living in the United States. The others currently reside in Jordan. Applicant's mother is in ill-health, and his brother's family looks after her most of the time. However, his mother often visits Applicant in the United States, and was living with him at the time of the hearing. Applicant's sister indicated in June 2016 that she was going to relocate to the United States or Australia later that year. Other than his mother, who was living with him, Applicant's contact with his brother and sister is minimal, usually phone calls every several months. Of note is the fact that the brother who currently lives in Jordan worked in the U.S. defense industry and had a security clearance. (Tr. 44-54.)

Applicant's daughter was studying in Jordan at the time the SOR was issued. She returned to the United States on June 16, 2016. (Tr. 55-57; Applicant Exhibit E.)

Applicant has only one other relative in Jordan. That person is his brother's wife, who is also Applicant's cousin. He does not have uncles, aunts or other extended family in Jordan. (Tr. 57.)

Applicant had a Jordanian passport at one time. It has expired and he only travels overseas on his U.S. passport. He submitted a copy of his passport that shows a trip to Jordan in 2014. (Tr. 38-39; Applicant Exhibit C.)

When his father died Applicant inherited part of a building in Jordan. Applicant believes his portion of the property is worth approximately \$25,000. The building is inhabited by Applicant's brother and, when she is there, his mother. By contrast, Applicant's net worth in the U.S. is approximately a million dollars. (Tr. 40-41, 60-62.)

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein.⁷ Jordan continues to have significant continuing human rights issues, including mistreatment and allegations of torture by security and Government officials. Discrimination against Jordanians of Palestinian origin remained widespread. The U.S. State Department assesses the threat of terrorism in Jordan as high. Also of note, on January 30, 2017, the Secretary of Defense met personally with King Abdullah II. At the meeting, "The two emphasized the close nature of the U.S.-Jordan defense partnership and reiterated their shared commitment to ensuring a stable and secure Middle East."⁸

Mitigation

Applicant submitted evidence showing that he is a highly respected and successful person and employee, and has been for many years. He has received recognition for his work on important defense-related programs over the years. His managers describe Applicant as a "major asset," a man who is "highly respected by management as well as his fellow engineers." (Tr. 31-34; Applicant Exhibits G and H.)

Letters of recommendation were submitted for Applicant from people who know him personally and professionally. All of his co-workers, including his current supervisor, recommend him for a position of trust, and also indicated that they and Applicant understand and follow security clearance requirements. (Applicant Exhibit H.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the

⁷ The following statements are based on the Government's administrative notice request (Government Exhibit 14), or that of the Applicant (Applicant Exhibit K), except as otherwise indicated. (See Tr. 29-30.)

⁸ U.S. Department of Defense, DoD News, Defense Media Activity, *Mattis Meets With Jordan's King, Calls South Korean, Italian Counterparts*, <https://www.defense.gov/News/Article/Article/1065103/mattis-meets-with-jordans-king-calls-south-korean-italian-counterparts> (Jan. 31, 2017.)

factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Paragraph 1 (Guideline E – Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified

information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
- (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . .; and
- (g) association with persons involved in criminal activity.

The following mitigating conditions under AG ¶ 17 apply to the facts of this case:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (g) association with persons involved in criminal activity has ceased or occurs under such circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Turning first to Applicant and Mr. X, it should be noted that all the information about Applicant's relationship with Mr. X was provided by Applicant. There is no other direct or indirect evidence of any type contained in the record about interactions between Applicant and Mr. X. Applicant has described the nature of that relationship on six separate occasions: 2011 e-QIP, 2012 interview, 2013 interview, 2015 interrogatories, 2015 Answer to SOR, and testimony in 2016 hearing. Each time, Applicant has repeatedly and credibly described a casual acquaintance with Mr. X for the time from 2004 through 2007, and then a business relationship for eight months in 2008. The business relationship ended when Applicant found out Mr. X was facing Federal criminal charges. There is no

evidence of anything more. While Applicant did have an association with a person involved in criminal activity, that relationship ceased as soon as Applicant learned of the pending charges, and eight years before the record closed.

Arguably, Applicant would also be able to mitigate the circumstances of his relationship with Mr. X, even if the case had been alleged under Guideline A: Allegiance to the United States. There the concern is more explicitly stated under DC ¶ 4(b) “association or sympathy with persons who are attempting to commit, or are committing,” an act of terrorism against the United States.” MC ¶ 5(a) states that it can be mitigating where “the individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of them.”

The Government also alleges that Applicant lied about the nature of his relationship with Mr. X during two interviews. Specifically, that Applicant knew Mr. X was facing charges that involved terrorism, and that Applicant continued to associate with Mr. X despite that fact. Nothing in the statements by Applicant would support such a finding. As stated, that is all the evidence about the nature of the relationship between the two available to me. When an applicant denies an allegation of falsification the Government has the burden of showing that the applicant’s statements in question are in fact false. They have not met that burden here. They have not presented any evidence of a close relationship between Applicant and Mr. X. Nor have they presented evidence that Applicant knew of Mr. X’s legal issues before being told in August 2008.

The Government presented evidence showing that Org. One had banking issues in 2009 because of an alleged relationship between Org. One and Org. Three, and attempted to show that there are concerns that Org. Three might be involved in terrorism. The Government asserted that such a connection, however tenuous, shows that Applicant must have known about Mr. X, despite the fact that there is simply no evidence to support such a finding. The document from the bank is vague and does not give any indication as to what evidence it used to make a finding as to the involvement of Org. One with Org. Three. As Department Counsel had to admit, while Org. Three has been the subject of Congressional inquiry, it was not and is not on the State Department List of Foreign Terrorist Organizations.

We now turn to the alleged falsification of Applicant’s 2002 and 2011 questionnaires about an alleged firearms charge in 1999. Once again, Applicant denied this allegation, stating he had no intent to deceive. I am convinced that he had no such intention. The Government only learned about the incident because Applicant asked for clarification from an investigator in 2013 about his offense. From all indications this was a good-faith mistake on the part of Applicant.

In conclusion, Applicant did not have an association with Mr. X that had any security significance, he did not lie about the nature of his relationship with Mr. X, nor did he lie about his 1999 firearms charge. Accordingly, I find for Applicant on all three allegations in Paragraph 1 of the SOR.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows at 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 following disqualifying conditions apply to this case under AG ¶ 7, based on the fact that Applicant has family connections in Jordan:

(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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has provided compelling evidence to show that the following mitigating conditions under AG ¶ 8 also apply to this particular case, given his particular situation:

(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; 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.

Applicant has lived in the United States for more than half of his life. His wife is a native-born American citizen, as are his children. Applicant convincingly states that he views himself only as an American citizen, and has shown that his loyalties are to the United States. His mother, brothers, and sister are also American citizens. They all travel to the United States freely. His interest in the property in Jordan is far exceeded by his net worth in the United States. Based on my analysis of the available information, Applicant has overcome the adverse inference arising from his familial contacts with Jordan. Guideline B is found for Applicant.

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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has mitigated all the security concerns arising from the SOR. Given the nature of the charges against Mr. X, I have carefully reviewed all the evidence. The available evidence simply does not support a finding that Applicant had a close relationship with Mr. X, or that he lied about their relationship. To find otherwise would be pure speculation. He has mitigated the security significance of his family connections to Jordan. Applicant is a law abiding, trustworthy, and responsible American citizen and employee. Applicant has had a long and successful career in the defense industry. He is knowledgeable about security rules and evinces a credible intent to follow them. Overall, the record evidence does not create doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge