



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



In the matter of:)
)
) ISCR Case No. 15-08764
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the foreign influence security concern raised by his mother-in-law in Syria. Eligibility for access to classified information is denied.

Statement of the Case

On May 26, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 7, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 4, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the Government's FORM and responded by letter dated August 31, 2016,

which I have marked as Applicant Exhibit (AE) 1. The case was assigned to me on May 4, 2017.

Procedural and Evidentiary Rulings

Evidence

The Government exhibits identified as Items 1 through 3 and AE 1 are admitted in evidence without objection.

Amendment to the SOR

The Government amended ¶ 1.c of the SOR pursuant to ¶ E3.1.17 of DOD Directive 5220.6, to render it in conformity with the evidence. Accordingly, ¶ 1.c alleges that Applicant's sister is a citizen of Jordan, residing in the United States.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Syria and Jordan. The requests were included in the record as Items 4 and 5. Applicant did not object. The requests are not admitted in evidence but I have taken administrative notice of the facts regarding Syria contained in Item 4. The facts administratively noticed are summarized in the Findings of Fact, below. I have not taken administrative notice of the facts regarding Jordan contained in Item 5, for reasons set forth below.

Findings of Fact

Applicant did not specifically admit or deny the SOR allegations in his response to the SOR. I considered the SOR allegations to be denied.¹

Applicant is a 55-year-old electrical engineer employed by his current defense contractor since December 2014. He previously worked for the same company from May 2013 to August 2014. He worked for two prior defense contractors from April 2001 to August 2012, during which time he experienced four periods of unemployment. He has never held a DOD security clearance. He obtained a bachelor's degree from a U.S. university in 1986. He was previously married from April 1990 to November 1991, and remarried in June 1992. He has three children, two adults and a 17-year-old, who are native-born U.S. citizens residing in the United States. He has owned his home in the United States since 1998.²

¹ Item 1.

² Item 2.

Applicant was born in Jordan. He immigrated to the United States in 1981. He was naturalized as a U.S. citizen in May 2000, and obtained a U.S. passport in November 2009.³

Applicant's wife was born in Syria. She is a dual citizen of Syria and the United States, residing with Applicant in the United States. Since becoming a U.S. citizen, she has not held a Syrian passport, and has held a U.S. passport for 16 years. She works from home as a part-time medical billing associate. She is aware that Applicant is applying for a security clearance.⁴

Applicant's mother-in-law is a citizen and resident of Syria. She is 77 years old and a widow of a Syrian-born U.S. citizen. Applicant disclosed in his January 2015 Electronic Questionnaires for Investigations Processing (SF 86), that he has had in-person and telephonic contact with his mother-in-law annually between June 1994 and June 2010. He indicated in his May 2015 interview with an Office of Personnel Management (OPM) investigator, that he does not have any contact with his mother-in-law. He acknowledged that his wife has frequent contact with her mother in Syria. Applicant traveled to Syria with his wife and children in June 2010, to visit his mother-in-law and the holy sites.⁵

Applicant has one sister who is a citizen of Jordan residing in the United States. She was born in Israel, is 57 years old, and widowed. She has a green card, is a permanent U.S. resident, and is in the process of applying for U.S. citizenship. Applicant has telephonic contact with her a couple of times weekly. She is the caregiver for their 82-year-old mother. Like his mother, Applicant's other sister and one brother are citizens and residents of the United States.⁶

Applicant's two sisters-in-law are citizens of Syria residing in Canada. In his response to the FORM, Applicant stated that one of his sisters-in-law and her family applied and were approved for a green card, and are pending a visa to come to the United States. One sister-in-law is a housewife. Both are married to doctors. Applicant indicated that he does not have any contact with them, but his wife telephones them weekly. They are unaware that Applicant is applying for a security clearance.⁷

Applicant stated that he is a law-abiding U.S. citizen. For the past 30 years, he has worked as an engineer, protecting his employer's intellectual properties, designs, and data.⁸

³ Items 2-3.

⁴ Items 1-3; AE 1.

⁵ Items 1-3; AE 1.

⁶ Items 1-3; AE 1.

⁷ Items 1-3; AE 1.

⁸ AE 1.

Syria

Syria is ruled by an authoritarian regime dominated by the Socialist Ba'ath Party, and is currently engaged in a full-scale civil war with the armed Syrian opposition. The regime has used deadly force to quell anti-government protests, and the regime's military operations have involved the use of ballistic missiles, aerial attacks, heavy artillery, and chemical weapons targeting civilian centers. The Syrian government is no longer in control of vast parts of the country, and the Islamic State in Iraq and the Levant (ISIL) controls large amounts of territory in the north and east.

Some Syrian opposition groups have utilized car bombs, improvised explosive devices, indirect fire attacks, sniper fire, and kidnapping throughout the country. Foreign combatants, including Iranian regime elements, Hizballah fighters, Islamic extremists, and al Qaida-linked elements, are participating in the hostilities. ISIL has committed atrocities against civilians, including U.S. citizens.

Military attacks from the Assad regime or other groups can happen any time without warning, and no part of Syria can be considered safe from violence, including the risk of kidnapping, sniper attacks, terrorist attacks, military attacks, arbitrary arrests, detention, and torture. Throughout Syria, U.S. citizens have experienced and will continue to experience a high risk of being kidnapped.

The U.S. intelligence community assesses with high confidence that the Assad regime has used chemical weapons, including the nerve agent sarin, against the Syrian people multiple times since 2015. It also assesses that ISIL is likely responsible for several mustard gas attacks in Syria.

The current security situation in Syria is unlikely to change soon. The war has caused hundreds of thousands of deaths, with many thousands wounded, 4.8 million refugees, and over 6.5 million internally displaced persons.

The U.S. State Department continues to warn citizens against travel to Syria. It has designated Syria as a state sponsor of terrorism since 1979. Syria continues to provide political and other support to a variety of terrorist groups. It has provided political and weapons support to Hizballah and Iran, while Iran, in turn, has supported the Syrian regime against its opposition. The Assad regime has played a significant role in the growth of terrorist organizations such as al Qaida and ISIL. As a result of its permissive attitude towards these and similar organizations, Syria has acted as a terrorist hub for foreign fighters entering Iraq to battle U.S.-led coalition forces. It has become an environment where terrorist groups, such as ISIL, have planned and launched deadly terrorist attacks against countries such as France, Saudi Arabia, Lebanon, and the United States.

Syria also continues to generate significant concern regarding the role it plays in terrorist financing. Industry experts have reported that 60% of all business transactions were conducted in cash, and nearly 80% of all Syrians did not use formal banking services. This environment has contributed to a vast Syrian black market, estimated to

be as large as Syria's formal economy. Regional *hawala* networks, operating in smuggling and trade-based money and facilitated by government corruption, contribute to concerns that members of the Syrian government and the business elite are complicit in terrorist finance schemes.

The U.S. State Department's 2015 human rights report stated that the worst human rights violations were caused by the Assad regime's fundamental lack of regard for the well-being of most of its populace. Human rights violations were widespread and consisted of the government's failure to protect its people from deadly violence and other abuses by terrorist groups, such as ISIL and Jabhat-al-Nusra. The Assad government has perpetrated indiscriminate and unlawful violence against its citizens, including bombings of schools, hospitals, and residential areas, often for the purpose of furthering a military goal.

The Syrian government conducts surveillance of foreign visitors. U.S. citizens visiting Syria should expect the potential for monitoring of their activities. They should also expect the possibility of incarceration for seemingly innocuous actions such as taking pictures, using a GPS, or discussing politics or religion.

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 known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a trustworthiness 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 guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

One of Applicant's sisters, while a Jordanian citizen, is a permanent resident of the United States. She holds a green card and is in the process of applying for U.S. citizenship. She is widowed and is the caregiver for their 82-year-old mother. The record does not contain any evidence that she has any other ties to Jordan. Given these facts, none of the disqualifying conditions under AG ¶ 7 apply, and I find SOR ¶ 1.c in Applicant's favor.

Applicant's wife, mother-in-law, and two sisters-in-law are citizens of Syria. His mother-in-law resides in Syria. Syria is an authoritarian regime that has used chemical weapons against the Syrian people. It is engaged in a civil war with the armed Syrian opposition. Military attacks from the Assad regime or other groups can happen at any time without warning, and no part of Syria can be considered safe from violence. The government is not in control of vast parts of the country, and ISIL controls large amounts of territory in the north and east. Syria is designated by the U.S. State Department as a state sponsor of terrorism. It is a terrorist hub and terrorist groups have planned and launched deadly attacks from Syria.

Applicant's foreign contacts through his wife create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's wife, while a Syrian citizen, is also a U.S. citizen residing in the United States. As of Applicant's January 2015 SF 86, Applicant's wife last traveled to Syria in 2010. In addition, Applicant's two sisters-in-law, while Syrian citizens, reside in Canada. One has applied and been approved for a green card for herself and her family, and they are pending a visa to come to the United States. Accordingly, AG ¶ 8(a) is established, and I find SOR ¶¶ 1.a and 1.d in Applicant's favor.

Applicant's mother-in-law, however, is a Syrian citizen residing in Syria. Accordingly, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a), 7(b), and 7(d). While Applicant's wife has not visited her mother in Syria since 2010, she nonetheless maintains frequent contact with her mother. AG ¶ 8(c) is not established.

Applicant has lived in the United States since 1981 and became a naturalized U.S. citizen in 2000. His three children are native-born U.S. citizens residing in the United States. His mother, one brother, and one sister are U.S. citizens residing in the United States. He has owned his home in the United States since 1998. He is law-abiding, and has worked for the past 30 years as an engineer, protecting his employer's intellectual properties, designs, and data. These are factors that weigh in Applicant's favor. However, Applicant's ties to his mother-in-law through his wife are equally as strong. Applicant failed to meet his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 have incorporated my comments under Guideline B in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his mother-in-law in Syria. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge