



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



In the matter of: )  
)  
) ISCR Case No. 14-04864  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Department Counsel  
For Applicant: *Pro se*

12/10/2015

**Decision**

DAM, Shari, Administrative Judge:

Applicant was born in Syria and came to the United States in 1991. He became a naturalized U.S. citizen in 2012. Applicant’s father is a citizen and resident of Syria. Applicant has a current Syrian passport that he used for travel after becoming a U.S. citizen. He has about \$22,000 of old delinquent debts, which remain unresolved. He failed to present sufficient evidence to mitigate foreign preference, foreign influence, and financial security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 12, 2014, Applicant submitted a security clearance application (SF-86). On January 7, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), alleging security concerns under the guidelines for foreign preference, foreign influence, and financial considerations. 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 effective after September 1, 2006. The SOR detailed reasons why DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Applicant answered the SOR in writing on January 21, 2015, (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 8, 2015, and issued a Notice of Hearing on August 19, 2015, scheduling the hearing for September 9, 2015. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence, which were admitted without objection. Applicant testified and offered three exhibits (AE) A through C, which were admitted without objection.<sup>1</sup> DOHA received the transcript of the hearing (Tr.) on September 17, 2015.

### **Procedural Rulings**

Department Counsel requested administrative notice (AN) of facts concerning Syria. She provided web citations to 13 supporting documents to show detail and context for those facts (HE 1.) Applicant did not object to the request or documents, and Department Counsel's request was granted. (Tr. 12.)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004), and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact**

In his Answer, Applicant admitted all allegations contained in the SOR, except one contained in SOR ¶ 3.e. His admissions, including those made during interviews on February 14 and March 13, 2014, and in his answers to Interrogatories dated November 14, 2014, are incorporated herein as findings of fact. (Answer; GE 3.)

Applicant was born in Syria. He is 45 years old. He attended a Syrian university for two years. In 1991 he came to the United States on a student visa, and subsequently earned a bachelor's degree from a U.S. university. He is divorced from his third wife since 2006 and does not have any children. His third wife held dual citizenship with Syria and the United States. (Tr. 17.) He became a naturalized U.S. citizen in 2012. (Tr. 18.) He has dual citizenship with the United States and Syria. (Tr. 22; GE 3.) He said that he is willing to renounce his Syrian citizenship and relinquish his Syrian passport if necessary. (GE 3.)

Applicant renewed his Syrian passport in 2013, while he was visiting Turkey to help his parents move from Syria to Turkey. His mother subsequently died. He had a U.S. passport at the time of his travel there. His father subsequently returned to Syria

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<sup>1</sup> Applicant's three exhibits (AE A, B, and C) were not formally introduced at the beginning of his case-in-chief, but were discussed during his testimony without objection from Department Counsel. Hence, these exhibits are admitted and made part of the record.

and currently resides there. (Tr. 18-19.) As a consequence of having a Syrian passport, he was able to remain in Turkey for six months, work, and obtain health insurance coverage. In June 2014 he used his Syrian passport to travel to Turkey in order to avoid obtaining a visa. He remained there one week. (Tr. 22.)

The last time Applicant visited Syria was 2008. Between 1991 and 2008, he visited Syria four or five times. He used his Syrian passport. (Tr. 20.) He does not have any plans to visit his father in the future because he is afraid to return to Syria due to the violence and unrest. (Tr. 26, 30; Answer.)

Applicant's elderly father is a Syrian citizen and resident. He is a retired medical doctor. He maintains electronic contact with his father about twice a week. (Tr. 23-24.) Applicant sends his father a \$1,000 each month from a real estate investment the family owns in the United States. The investments are held in Applicant's and his brother's names, and are worth about \$1.4 million. (Tr. 25, 29.) Applicant's brother is a naturalized U.S. citizen and resident. Applicant's sister, a Syrian citizen, resides in Turkey. Sometimes he sends her money. (Tr. 23, 25; GE 2.)

In 2012 Applicant paid \$5,000 to avoid military service in Syria. At the time both parents were living there and he was concerned that if he returned to visit them he would be immediately drafted into military service. (Tr. 27-28, 30.)

Applicant has aunts, uncles, and cousins, who are citizens and residents of Syria. He speaks to one uncle weekly and three other relatives occasionally. (Tr. 28.) He sends an aunt \$1,000 every couple months from the family's U.S. investment account. (Tr. 29; AE A.)

Applicant currently works for a private company. (Tr. 13-15.) He initially applied for a security clearance in October 2011 when he sought a position with a defense contractor. (Tr. 16.) He submitted a second security clearance application in January 2014 for a different defense contractor. (GE 1, 2.)

Applicant earns approximately \$110,000 in his current position in private industry. He has about \$100,000 in savings in the United States, in addition to his interest in the family's investment account. (Tr. 31-32.)

Based on credit bureau reports (CBR) from April 2015 and February 2014, the SOR alleged seven delinquent debts that totaled \$25,873 and became delinquent between 2006 and 2008. (Tr. 43; GE 3, 4, 5.) None of the debts has been resolved, except the one alleged in SOR ¶ 3.e for \$2,354, which he disputed and was subsequently deleted from his CBR.

During an interview in February 2014, Applicant discussed his delinquent debts with a government investigator, including those listed on the SOR. He indicated that he was completing credit counseling with a company in order to resolve his credit issues. (GE 3.) He testified that he began the credit counseling before he applied for a security clearance in 2014. (Tr. 41.)

Applicant attributed the delinquent debts to his third marriage and subsequent divorce, in addition to a period of unemployment from March 2013 through January 2014, which included the time he completed the SF-86 in January 2014. (GE 3.) As part of his divorce settlement, he was required to pay his former wife \$60,000, which caused him a financial strain. (Tr. 46.)

Applicant provided no evidence concerning the quality of his professional performance or career, or the level of responsibility his duties entail. He submitted no professional character references describing his judgment, trustworthiness, integrity, or reliability.

## **Syria**

I took administrative notice of the facts set forth in the Administrative Notice documents concerning Syria, which are incorporated herein by reference. Of particular significance are Syria's history concerning its authoritarian ruling regime, its being a state-sponsor of terrorism, and dismal record of human rights violations. Syria is currently experiencing significant political and violent unrest. The U.S. State Department has issued travel warnings to the country because of ongoing threats to U.S. citizens and its interests, and recommends U.S. citizens leave the country. The Syrian government conducts physical and electronic surveillance of its citizens and foreigners. The security situation in the country is extremely volatile.

## **Policies**

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 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, these guidelines are applied in conjunction with the 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.

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 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. Directive ¶ E3.1.15 states that, “[t]he 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.”

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.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline C, Foreign Preference**

AG ¶ 9 sets forth the security concern involving foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes two conditions that could raise a security concern and may be disqualifying in 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. This includes but is not limited to:

- (1) possession of a current foreign passport; and
- (2) military service or a willingness to bear arms for a foreign country.

Applicant holds a Syrian passport that he renewed while he was a U.S. citizen. He used that passport to travel to Syria, after become a U.S. citizen in 2012. That evidence raised a disqualifying condition under AG ¶ 10(a)(1) as to the allegation in SOR ¶ 1.a. Applicant paid \$5,000 to avoid mandatory military service in Syria. There is no evidence that he ever served in the Syrian army or expressed a willingness to serve in it. Hence, no disqualifying condition was established as to the allegation contained in SOR ¶ 1.b. The evidence having raised one security concern under this guideline, the burden shifted to Applicant to rebut, extenuate, or mitigate the security concern.

AG ¶ 11 provides five conditions that could mitigate security concerns arising under this guideline:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant stated that he was willing to renounce his Syrian citizenship, establishing limited mitigation under AG ¶ 11(b). However, he continues to hold a Syrian passport that he renewed in 2013 after becoming a U.S. citizen. None of the other mitigating conditions apply to the passport allegation raised under this guideline.

## **Guideline B, Foreign Influence**

AG ¶ 6 explains the security concerns pertaining to foreign influence as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out a condition that could raise a security concern and may be disqualifying in this case:

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

The mere possession of close family ties with a family member living in Syria is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. (See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

Syria engages in significant internal and external anti-western terrorism and threats of terrorism, which operate openly contrary to U.S. interests. It is known to target U.S. citizens. The hostile relationship of Syria with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationship with his father living in Syria does not pose a security risk. While there is no evidence that terrorists from Syria seek or have sought classified or economic information from or through Applicant's father, it is not prudent 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 father who resides in Syria. Accordingly, Applicant's close connection to his father has generated a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). These facts meet the Government's burden of production by raising the aforementioned foreign influence disqualifying condition and shifting a heavy burden to Applicant to prove mitigation. Because his sister no longer resides in Syria, but in Turkey, which is not identified in this case as a country creating a heightened risk, the allegation in SOR ¶ 2.b is found in his favor.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns. Those with potential application in this case are:

(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.

Considered in light of the substantial anti-Western terrorism threat and state-sponsored terrorist activities in Syria, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual and those of the United States due to family ties in Syria. He has a consistent and ongoing relationship with his father, who resides in Syria. He 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 a family member, who might be coerced by terrorists or other entities in Syria. In addition, his communications with his father since coming to the United States is sufficiently frequent, such as to not be construed as casual or infrequent. He visited Syria at least four or five times since arriving in the United States in 1991, and went to Turkey in 2013 to help his parents. Accordingly, he failed to establish mitigating conditions set forth in AG ¶¶ 8(a) or (c).

AG ¶ 8(b) provides some mitigation. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." He has lived in the United States since 1991, and became a citizen in 2012. He has some financial ties to the United States, including a financial interest in an investment that is worth about \$1.4 million, and \$100,000 in savings. He earned a college degree from a U.S. university. His brother is a U.S. citizen and resident.

## **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant owes about \$23,000 in unresolved delinquent debts that he incurred over the past eight or more years. He offered no persuasive evidence of attempts to resolve six of the seven delinquent debts. The evidence raises the above two disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant incurred substantial delinquent debts, which continue to date. He offered insufficient evidence from which to establish a track record of debt resolution. He failed to fully demonstrate that conditions beyond his control contributed to his financial problems, or that he acted responsibly under such circumstances. He provided insufficient proof that his debts are under control, or that he made a good-faith effort to resolve them, despite having about \$100,000 in savings. Accordingly, the record is insufficient to establish mitigation under AG ¶¶ 20(a) through (d). He submitted proof that he successfully disputed one debt for \$2,354, establishing mitigation under AG ¶ 20(e) for the allegation in SOR ¶ 3.e.

### **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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent, articulate, and educated person, who has lived in the United States since 1991, and became a citizen in 2012, three years ago. He earned a college degree from a U.S. university. He works for a private company in the United States. He has a large financial interest in a U.S. investment account, and personal savings of \$100,000. His brother lives in the United States. These are factors that weigh in favor of granting him a security clearance. However, the facts that weigh against granting the clearance are significant. He holds dual citizenship with Syria, and used his Syrian passport for travel, rather than his U.S. passport in 2013 and 2014, as a convenience. He has a close, ongoing, and understandingly loyal relationship to his elderly father, who is a citizen and resident of Syria. He was born in Syria and attended a university there. In addition, he has about \$23,000 of delinquent debts, which became delinquent between 2006 and 2008, and remain unresolved.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns pertaining to foreign preference, foreign influence, and financial considerations. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant did not mitigate the security concerns arising under Guideline C, Guideline B, and Guideline F.

### **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:	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Paragraph 3, Guideline F:

AGAINST APPLICANT

Subparagraphs 3.a through 3.d:

Against Applicant

Subparagraph 3.e:

For Applicant

Subparagraphs 3.f and 3.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.

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Shari Dam  
Administrative Judge