



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



In the matter of:)	
)	
)	ISCR Case No. 14-04976
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

10/05/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. His sister is a dual U.S. and Syrian citizen. His aunt and mother-in-law are citizens and residents of Syria. The foreign preference and foreign influence security concerns have been mitigated. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 24, 2014, the DoD issued a Statement of Reasons (SOR) detailing foreign preference and foreign influence security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

¹ Executive Order 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) effective within the DoD on September 1, 2006.

On January 7, 2015, Applicant answered the SOR and requested a hearing. On March 25, 2015, I was assigned the case. On April 22, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on May 5, 2015. I admitted Government's Exhibits (Ex.) 1 and 2, without objection. Applicant testified at the hearing, as did his supervisor. The record was held open to allow Applicant to submit additional information. Additional material was received and admitted into the record without objection as Ex. A through J. On May 13, 2015, DOHA received the hearing transcript (Tr.).

Procedural Rulings

Department Counsel requested administrative notice of facts concerning the Syrian Arab Republic (Syria) and provided supporting documents to show detail and context for those facts. Applicant did not object or agree to the administrative notice request.

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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). I marked the documents as Ex. Exhibit I. See the Syrian section of the Findings of Fact of this decision, *infra*, for the facts accepted for administrative notice.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 48-year-old information technology (IT) security analyst who has worked for a defense contractor since January 2013, and seeks to obtain a security clearance. Applicant's supervisor, who has known him since 1998, when Applicant graduated from college, states Applicant is trustworthy, very objective, honest, and a family-oriented person. (Tr. 32-34) Applicant is hard working and has received a superior achievement award, a teamwork award, a certificate of appreciation, a technical achievement award, four performance awards, and has been the company's employee of the month three times. (Ex. A - J) He has never compromised or mishandled IT, classified, or sensitive information.

Applicant was born in Syria to a Syrian father and a U.S. mother. His parents are deceased. He has lived in the United States for more than 28 years. At age eight months, his family moved to Saudi Arabia where his father was an economist. (Tr. 21)

While in kindergarten, his family moved to Beirut where his father worked for the United Nations. (Tr. 21) When the war in Lebanon started, the family moved to Syria where Applicant remained until he finished high school. In 1987, he then moved to the United States. (Tr. 21)

From August 1987 to December 1996, Applicant attended university in the United States. In December 1998, he obtained his bachelor's degree in electrical engineering. (Ex. 1, Tr. 24) His wife, and two children, ages 6 and 11, are U.S. citizens living with him. His children are involved in soccer and football. (Tr. 37) He considers them the most important people in his life. (Tr. 26, 27) His mother's relatives live in an adjacent, southern U.S. state. In April and May 2008, he visited Syria to attend his mother's funeral. (Ex. 1, Tr. 30) For a week in October 2009, he visited Syria to attend his father's funeral. (Ex. 1, Tr. 30) These are the only foreign travel trips listed on his Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1)

Applicant's sister, a high-school teacher who writes math and computer textbooks, is a dual U.S.–Syrian citizen, living in Syria. (Tr. 28) His aunt, a retired English translator and his mother-in-law, a retired school teacher, are citizens and residents of Syria. (Ex. 2, Tr. 28) In January 2015, his father-in-law, a retired bank employee, died. (Tr. 20, 28, 31) His last in-person contact with his sister and aunt was three years ago when they visited him in the United States. He talks to or texts with his sister and aunt monthly. (Tr. 22) He contacts his mother-in-law yearly, on her birthday. (Tr. 50) His next previous in-person visit with his sister was in 2009, when he visited Syria following his father's death. (Ex. 2)

If someone attempted to force Applicant to provide information by putting pressure on his aunt or sister, he would inform his company's security officer. He would not provide information to a terrorist, for doing so would not help his relatives. (Tr. 26) He would not do wrong to help someone doing wrong. (Tr. 28) He does not believe any action on his part could help them and he does not believe action against them could influence him. (Tr. 58)

During an April 2014 Personal Subject Interview (PSI), Applicant stated he liked his Syrian heritage and his American heritage. (Tr. 51, 52) He did not prefer Syria over the United States, although the PSI states he "holds equal allegiances to Syria and the USA." (Ex. 2) Although proud of his Syrian heritage, he is willing to renounce his Syrian citizenship. (Tr. 53) During the interview, he indicated he valued both his mother's heritage as well as his father's. He was not speaking about allegiance to a country, but about his heritage and the qualities he received from each parent. (SOR Answer)

SYRIA

Since 1963, the Syrian Arab Republic has been ruled by an authoritarian regime. Syria has been in a state of emergency since 1963 and is currently in a full-scale civil war. The conflict has resulted in tens of thousands of death, many more wounded, 2.3 million refugees, and 6.5 million internally displaced people.

Syria is included on the Department of State's List of State Sponsors of Terrorism due to the presence of several terrorist groups operating in Syria. The Syrian Government provides political and material support to Hezbollah and Palestinian terrorist groups. Several terrorist groups base their external leadership and maintain offices in Damascus. In addition, Syria permits Iran to transfer weapons and supplies through Syria to Hezbollah in Lebanon. Syria is one of the primary transit points for foreign fighters entering Iraq.

In May 2004, sanctions were implemented by executive order due to Syria's active and passive support of terrorism in the Middle East. Exports of U.S. goods to Syria are prohibited except for food and medicine.

The Department of State's Report on Human Rights Practices for 2007 indicates the Syrian Government's human rights record has "worsened." The U.S. intelligence community believes the Assad regime has used chemical weapons, including nerve agents, and barrel bombs against the Syrian people on numerous occasions. In Syria the following human rights abuses occur: absence of right to change government, arbitrary and or unlawful deprivation of life, torture in prison, poor prison conditions, arbitrary arrests and detentions, absence of rule of law, severely restricted civil liberties, limited freedom of religion, government corruption, lack of transparency, and violence against women. Security forces frequently use torture against foreign citizens. The security situation throughout Syria will remain volatile and unpredictable for the foreseeable future.

The four major branches of Syrian security forces all devote resources to monitoring internal dissent and individual citizens, and operate outside the control of the legal system. Security personnel have placed foreign visitors under surveillance, monitored telephones, and search the hotel rooms and possession of foreign visitors.

Dual citizens and U.S. citizens whose fathers are of Syrian descent are required to complete military service or pay to be exempted.

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 must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

Foreign Preference, Guideline C

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 ¶ 9.

AG ¶ 10 describes a condition that could raise a security concern and may be disqualifying in Applicant’s case:

- (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

During Applicant’s April 2014 Personal Subject Interview, he stated he liked his Syrian heritage and his American heritage. He did not indicate he preferred Syria over the United States, although the PSI states he “holds equal allegiances to Syria and the USA.” Applicant’s statement about having “allegiance” to Syria was more an expression of sympathy or empathy towards his Syrian heritage and was not an expression of loyalty or allegiance to Syria. Although proud of his Syrian heritage, he is willing to renounce his Syrian citizenship. During the interview, he indicated he valued both his mother’s heritage as well as his father’s. He was not speaking about allegiance to a country, but about his heritage and the qualities he received from each parent.

AG ¶ 11 provides a condition that could mitigate security concerns:

(b) the individual has expressed a willingness to renounce dual citizenship.

Although proud of his Syrian heritage, Applicant stated during his interview that he was willing to renounce his Syrian citizenship. AG ¶ 11(b) applies, and foreign preference concerns are mitigated.

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

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

Two disqualifying conditions under AG ¶ 7 of the guideline are potentially applicable:

(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

(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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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).

Applicant is a dual U.S. citizen from birth because his mother was a U.S. citizen and his father a Syrian citizen. He was born in Syria. His parents are deceased. He has lived in the United States for more than 28 years. He lived briefly in Syria before moving with his family at age eight months to Saudi Arabia. In kindergarten, his family moved to Beirut where his family stayed until the Lebanon civil war started. He then lived in Syria until he finished high school. In 1987, he then moved to the United States. He last visited Syria in 2009, following the death of his father. He attended university in the United States and obtained his bachelor's degree in electrical engineering. Applicant's immediate family and also his mother's relatives reside in the United States. He considers his wife and children the most important people in his life. They are U.S. citizens living with him.

Applicant's sister, a high-school teacher who writes math and computer textbooks, is a dual U.S.–Syrian citizen living in Syria. His aunt is a retired English

translator and his mother-in-law is a retired school teacher. They are citizens and residents of Syria. He talks to or texts with his sister and aunt monthly. He contacts his mother-in-law yearly on her birthday. His relationship and contacts with his aunt and mother-in-law are minimal.

If someone attempted to obtain information from Applicant by putting pressure on his aunt or sister, he would inform his company's security officer. He would not provide information to a terrorist for doing so would not help his relatives. He would not do wrong to help someone who is doing wrong. He does not believe he could be influenced by them.

Three mitigating conditions under AG ¶ 8 of the guideline 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 of foreign influence or exploitation.

Security clearance adjudications are predicative judgments, where an applicant's past history is the best indicator of future conduct. He has never compromised or mishandled classified or sensitive information. Applicant established that he has a history of safeguarding this nation's secrets and there is no reason to doubt his ability to do so going forward.

Applicant came to the United States more than 28 years ago. His professional life is in the United States. Applicant has significant professional and personal ties to the United States. In light of Applicant's close ties to the United States, it is unlikely that he would choose his sister, aunt, or mother-in-law in Syria over his connections to the United States. I find that he would resolve any potential conflict in favor of national security. Applicant's family ties are not sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. Based on all these circumstances Applicant met his burden of persuasion and mitigated the foreign

influence concern. Mitigating condition AG ¶ 8(b) applies. Even if security concerns are not mitigated under 8(b), they are mitigated under the whole-person concept, *infra*.

Whole-Person Concept

Under the whole-person concept, an 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. An 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 and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has been in the United States for 28 years, much longer than he lived in Syria. His wife and children are U.S. citizens living with him. He was articulate, candid, sincere, and credible at the hearing. Applicant's home is in the United States. Applicant has been successful in his work.

Applicant chose to come to the United States and pursue his career here. He could have returned to Syria at any time during the last 28 years, but did so only for short times following the deaths of his parents. He is firmly established in the United States with a stable family, social, and professional life. His life is focused here. He has loyalty to the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. His assets are located in the United States. There is no evidence any of Applicant's relatives in Syria are involved with, or under scrutiny, or have interests antithetical to the United States. Although his sister, aunt, and mother-in-law are in Syria, I am convinced that he will resolve any issues in favor of the United States.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude he has 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

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, Foreign Preference: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Foreign Influence: FOR APPLICANT

Subparagraphs 2.a – 2.c: 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 Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge