



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



In the matter of:)	
)	
)	ISCR Case No. 14-03789
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

May 29, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on February 28, 2013. On November 6, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 11, 2014. She answered the SOR in writing on December 16, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on March 4, 2015. DOHA issued a notice of hearing on March 5, 2015, and I convened the hearing as scheduled on April 9, 2015. The Government offered Exhibits (GXs) 1 and 2, which

were received without objection. Applicant testified on her own behalf, as did her spouse, and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on April 16, 2015. I granted Applicant's request to keep the record open until May 8, 2015, to submit additional matters. On May 8, 2015, she submitted AppXs B and C, which were received without objection. The record closed on May 11, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Syria. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline B - Foreign Influence

The 52 year-old Applicant immigrated to the United States from Syria at the age of 28. (TR at page 27 lines 3~10.) She became a U.S. citizen in 2000. (GX 1 at page 8.) She's been married to her current husband for 17 years, and they have two children. (TR at page 31 line 24 to page 32 line 10.) She also has a stepson from her husband's former marriage. (TR at page 32 lines 13~18.) Applicant last visited Syria in 2008, to attend a "niece's wedding." (TR at page 32 lines 19~22.)

1.a. Applicant's oldest brother is a citizen and resident of Syria. (GX 1 at pages 32~33.) He has been in the Syrian Merchant Marines for 30 years. (TR at page 39 line 2 to page 40 line 23.) She last saw him in 2005, and they communicate on "special occasions . . . holidays." (TR at page 41 lines 7~24.)

1.b. Applicant's middle brother is also a citizen and resident of Syria. (GX 1 at pages 33~34.) In January of 2015, just two months before her hearing, he retired as a general officer from the Syrian air force. (TR at page 42 lines 4~22.) He served in the Syrian armed forces for about 39 years. (TR at page TR at page 42 line 23 to page 43 line 3.) Applicant has spoken to her brother "probably two times" since his retirement. (TR at page 43 lines 6~9, see *a/so* at page 54 line 1 to page 55 line 10.)

1.c. and 1.f. Applicant's third, and youngest brother, is a citizen of Syria, but he and his wife reside in Egypt. (GX 1 at pages 35~36, and TR at page 45 lines 22~24.) "When the war started [current civil war in Syria], they went to Turkey. They stayed

there for a few months. Spent all his money, very expensive, and then he moved to Egypt.” (TR at page 46 lines 1~4.) Applicant sent monies to this brother to help with his family’s transition from Syria to Egypt by way of Turkey. (TR at page 44 line 24 to page 46 line 11.) He, like her oldest brother, is in the Merchant Marines. (TR at page 45 lines 14~17.) She last saw him in 2005; and in the last year, they communicated “probably two, three times” on “holidays.” (TR at page 45 lines 6~21.)

1.d and i.e. Applicant’s older sister is a citizen and resident of Syria. (GX 1 at pages 36~37.) She is a retired teacher, living on a retirement pension. (TR at page 47 lines 6~9.) In 2014, her sister visited Applicant in the United States “for about four or five months.” (TR at page 47 lines 10~13.) This sister’s “husband’s really sick . . . with bad asthma.” (TR at page 48 lines 1~19.) Applicant supports her sister financially, sending her \$100~\$300 on a monthly basis. (TR at page 48 lines 12~18, and at page 55 lines 11~18.)

I also take administrative notice of the following facts. Syria is ruled by an authoritarian regime. Due to the continuing civil war, the security situation throughout Syria is very likely to remain volatile and unpredictable for the foreseeable future. Syria is also designated by the U.S. Department of State as a “State Sponsor of Terrorism.”

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 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.

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 as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

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 a foreign interest.

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” Three of Applicant’s four siblings are citizens of and reside in Syria. Her youngest Syrian brother resides in Egypt. She supported, financially, his move to Egypt. She also provides continuing financial support to her sister. She has spoken to her middle brother, a recently retired Syrian general officer, twice in 2015. In light of Applicant’s close and continuing family connections with her Syrian national siblings in both Egypt and in Syria, I find Foreign Influence against the 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 the 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 also 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 have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Although Applicant is clearly well respected by current and former members of the U.S. military (AppXs A~C), overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has not mitigated the security concern arising from her Foreign Influence.

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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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.

Richard A. Cefola
Administrative Judge