

DATE: October 29, 2007

In Re:)
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 -----) ISCR Case No. 07-00426
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a highly educated 43 year old Programmer Analyst who was born in Jordan in 1964, and met her future American-born husband while here for a college program in 1992. She moved here, married, and completed her MBA in 1995. She became a U.S. citizen in 2002. She has renounced her Jordanian citizenship and surrendered her expired Jordanian passport. Her elderly mother and sisters are still citizens and residents of Jordan. Her closest ties are with her mother. She has no other emotional, financial, or other ties to Jordan. Her ties to the U.S. are both deep and strong. She credibly avers prompt reporting of any inappropriate contacts regardless of the source. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On July 11, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On July 25, 2007, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on September 11, 2007. A Notice of Hearing was issued on September 20, 2007, setting the hearing for October 4, 2007. The Government introduced four (4) exhibits (Government's Exhibits (GX) 1 - 4). The Government also introduced seven (7) Official Notice documents (ON I-VII). Applicant testified, and introduced four (4) / exhibits. (Applicant's Exhibits (AX) A - E). Applicant also introduced four post hearing exhibits (AX F-I) and a series of Official Notice documents (App ON I, and 1A - 1.S). Some of the Applicant's offered Official Notice documents do not qualify as such and, although not admitted as such, have been considered as hearsay documents that provide some insight, but have not influenced the outcome of this decision. The transcript was received on October, 2007.

FINDINGS OF FACT

Applicant is a 42-year-old Programmer/Analyst for a defense contractor. The SOR contains seven (7) allegations under Guideline B (Foreign Influence) and two (2) allegations under Guideline C (Foreign Preference). Applicant admits all allegations, which are accepted and incorporated herein as Findings of Fact.¹

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline B (Foreign Influence)

1.a. - Applicant's 69 year old mother is a citizen and resident of Jordan.

1.b., 1.c., 1.e., and 1.f. - Applicant's sisters are citizens and residents of Jordan.

1.g.- Applicant traveled to Jordan from December 26, 2000 to January 8, 2001, at which time she was not yet a U.S. citizen.

1.h. - Applicant traveled to Jordan from December 26, 2003 to January 8, 2004, during which period she was a U.S. citizen. She used the Jordanian passport in 2003 for "convenience" and to avoid having to obtain a Jordanian visa (GX 2). She visited Jordan once more in 2007, with her husband. This time she had some Jordanian money and purchased a visa to use with her U.S. passport (Tr at 83).

Guideline C (Foreign Preference)

2.a. - Applicant held dual U.S.-Jordanian citizenship, by virtue of her birth in that country to Jordanian citizens. She has renounced her Jordanian citizenship by letter to the Embassy of Jordan in Washington, D.C. (Tr at 83-85, AX F, G, and H).

2.b. - Applicant used her Jordanian passport to travel to Jordan after becoming a U.S. citizen on August 15, 2002 and receiving a U.S. passport on August 23, 2002, as detailed in paragraph 1.h., above. On the latter occasion she attempted to use her U.S. passport, but was told by Jordanian authorities at the airport that she would need a visa that could be paid for only in Jordanian money.

She did not have any and it was available only in another section of the airport. Her elderly mother was waiting for her, so she decided to avoid any problem or delays by using her Jordanian passport. Under these circumstances, I find no suggestion that she acted out of any preference for Jordan over the United States. She has used her U.S. passport for all other travel. The passport expired in October 2005 and has not been renewed. She destroyed the Jordanian passport in the presence of the Facility Security Officer at her employing company (AX F and I).

Her mother and sisters are in good financial condition and do not need any help from Applicant. None of them are connected with the Jordanian government and Applicant does not believe they are in position to be exploited in such a way as to force Applicant to choose between them and the U.S. as to security related matters.

Applicant has consistently and credibly averred that "fact that my mother and sisters are outside the U.S. does in no way affect my maturity or loyalty. I firmly believe in work ethics, trust, and responsibility. I take my job seriously and I will not, and didn't at any time, let my relationship with family or friends to interfere with my judgment or duties" (Response to SOR).

"I state that while my mother is my tie to Jordan, my ties to the United States are numerous. They include my country, my family, my friends, my work, our financial assets, retirements, pension, and social security benefits. I consider myself to be fortunate and proud to be a citizen of this country and as loyal as an American born citizen" (AX F).

Her husband is a university professor. They own a condominium deeded to them by the university. He was present at the hearing. Other than her family, she has no friends in Jordan.

Her Project Manager and other colleagues praise her as reliable, professional, dedicated, of high character, security conscious in handling classified information, a "strict follower" of "company security policies," and "excited about becoming a U.S. citizen." Her father-in-law, who held a "Q" clearance for many years, avers that "her primary loyalty is, and would, be to the United States."

POLICIES

Viewed in an overall context, under E2.2.3.of the Directive, the ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an *overall common sense determination* based upon careful consideration of the following, each of which is to be evaluated in the *context of the whole person*. Explained further below (emphasis added):

The Whole Person Concept: Under E2.2.1., the DoD adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: 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 voluntariness of participation; 6. The presence or absence of rehabilitation and other pertinent 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.

CONCLUSIONS

Applicant is a 42-year-old "Programmer Analyst." (Tr at 55). Born in Jordan in December 1964, she worked for the Ministry of Tourism in 1982-1983 as a typist. She first came to the U.S. in 1992 to attend a six-month program. During that period, she met her future husband, a native-born U.S. citizen. She began thinking about emigrating to the United States and arrived in 1995, at which time they were married (Tr at 57, 86). She received a MBA in 1997, and became a naturalized U.S. citizen in August 2002 (Tr at 58). She has telephone contact with her family in Jordan every two or three months and visits them in Jordan every two or three years. She and her husband have a "household net worth" of about \$1.4 million (GX 2)

Foreign Influence - The concern is that "Foreign contacts and interests maybe 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

The concern stated in the SOR relates to (1) Applicant's mother and sisters being citizens and residents of Jordan, and (2) her travel to Jordan twice between December 2000 and January 2004, primarily to visit her elderly mother. This information was originally provided by Applicant in her security clearance application of December 15, 2005, and expanded upon in her answers to interrogatories of April 16, 2007. On both these occasions and at the October 4, 2007 hearing, she displayed no reticence in describing her feelings about her mother. At the same time, she was impressive in expressing her feelings about her family and life in America and her dedication to this country, as has been corroborated by her career in service to the national defense effort.

Disqualifying Condition(s) (DC)

8. (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, pressure, or coercion. None other apply.

Mitigating Conditions(s) (MC). Applicable are:

8.(a) the nature of th 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 United States; and

8.(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 long-standing relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of th United States.

Guideline C (Foreign Preference), the stated concerns are her "dual citizenship" with Jordan and her use of the Jordanian passport in 2003/2004, as discussed above under Findings of Fact, above. The security concern occurs 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.

2.a - Applicant's Jordanian citizenship was the result of her birth in Jordanian parents. She retained her Jordanian citizenship because she did not know it would be a problem. When she learned that was the case, she promptly renounced that citizenship by letter to the Jordanian Embassy along with her cut up Jordanian passport.

2.b. - Her Jordanian passport was obtained before she became a U.S. citizen and therefore cannot be considered an act of preference for Jordan over the United States. Her use of the Jordanian passport on the one occasion cited in the SOR occurred after she tried to use her U.S. passport and out of concern for her elderly mother waiting for her elsewhere at the airport. She has recently renounced her Jordanian citizenship by letter to the Jordanian Embassy and attaching the Jordanian passport she cut up in front of her company's facility security officer. Under these circumstances her conduct did not indicate any preference for Jordan over the United States. The record does not reflect any conduct indicating a preference for Jordan.

I understand the Government's concern with the mother and sisters in Jordan being at risk of being pressured to use whatever influence they may have on Applicant to act against U.S. security interests. However, the real concern in Guideline B and C cases is that a person seeking or possessing a clearance might respond to such pressure by acting improperly and against U.S. interests.

Disqualifying Conditions

10.(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:

10(a)(1) Possession of a foreign passport. None other apply;

Mitigating Conditions

11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

11.(b) the individual has expressed a willingness to renounce dual citizenship [and has actually done so].

11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

I have carefully considered the Government's exhibits and Official Notice documents. I understand the risks incurred by Applicant's family members being citizens and residents of Jordan. This nation has traditionally been friendly to the United States, and is not cited in Official Notice documents as being active in espionage or the gathering of sensitive information. At the same time, there are terrorist elements in Jordan that are a threat to foreigners, including U.S. citizens. I have taken this reality into account in my evaluation and risk analysis.

The Government's evidence comes down to the presence in Jordan of her mother and sisters, a situation about which she can do little or nothing. Their status is not her choice. At the same time, those relationships have survived for many years with Applicant living and working in the U.S., with no apparent security problems.

While the lack of past problems does not mean there will be no problems in the future, it is a positive factor that must be considered along with all other relevant information. Applicant understands her security obligations and promises to act appropriately. Such promises of future conduct may not be considered, by themselves, to be substantial evidence, they are augmented by Applicants long career in America's defense effort and the solidly positive opinions of those who have known her over so many years.

Applicant has a solid record of maturity, integrity, and service to her adopted country. Despite the risks that may exist solely because of her family members in Jordan, nothing in the record suggests that Applicant would even hesitate before doing the right thing, to instinctively protect U.S. security interests. Under the specific facts and circumstances in this case, I conclude that adequate mitigation of the risk has been shown.

Finally, in a recent case, the Appeal Board rejected the Government's contention that the Administrative Judge's "whole person analysis" was unsustainable (ISCR Case No. 04-06564 (May 30, 2006)). The Appeal Board found that the Administrative Judge had restated some of the Guideline B mitigating factors and presented a reasonable explanation for her decision, given the relevant factors in this case, making the favorable decision was sustainable.

After a careful study of the Appeal Board decision, and the underlying decision of the Administrative Judge, I conclude the facts and circumstances are substantially similar to those in the present case as a rationale for the granting of a DoD security clearance.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence)

Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant
Subparagraph 1.c.	For the Applicant
Subparagraph 1.d.	For the Applicant
Subparagraph 1.e.	For the Applicant
Subparagraph 1.f.	For the Applicant

Guideline C (Foreign Preference)

Subparagraph 2.a.	For the Applicant
Subparagraph 2.b.	For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**BARRY M. SAX
ADMINISTRATIVE JUDGE**