

DATE: October 9, 2007

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In re: )	
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----- )	ISCR Case No. 07-00596
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 44 years old, married with two children, and works for a defense contractor as an engineer. He has family in Jordan and the West Bank area of Israel. He uses an Israeli identification card when visiting his family, which he does regularly every two or three years. His family have Jordanian passports. His wife is a Jordanian citizen with a passport, and is a permanent U.S. resident. Applicant has not mitigated the foreign influence and foreign preference security concerns. Clearance is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 9, 2007, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on April 30, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on July 5, 2007.

On July 26, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government submitted exhibits that were admitted into evidence. The Applicant did not submit any exhibits.

During the course of the hearing, the Government moved to amend the SOR to conform it to the evidence on the record. Four amendments were proposed. The first amendment was to Subparagraph 1.d, to add the date “and 2007.” Next, a new Subparagraph 1.e was proposed, to read, “Your wife is a citizen of Jordan with a Jordanian passport and an Israeli identification card, and is a permanent resident of the U.S.” A new Subparagraph 1.f was proposed to read, “You inherited one-seventh of a home, worth approximately \$140,000, which is located in Jerusalem, Israel.” Then, a new Paragraph 2 under Guideline C, with Subparagraph 2.a reading “You maintain an Israeli identification card at the border of Israel and Jordan. You used this identification card when you entered Israel in 2000, 2002, 2004, and 2007.” Applicant had no objection to any of these amendments, and I granted the motions to amend the SOR. Applicant then entered answers to each amendatory subparagraph by admitting each of the allegations. (Tr. 85-92) DOHA received the hearing transcript (Tr.) on August 8, 2007.

## FINDINGS OF FACT

Applicant's admissions to all the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 44 years old, married to his second wife for the past five year, and has two children from this marriage. Applicant works for a defense contractor as an engineer. He owns his own home in the U.S., valued at about \$300,000. (Tr. 14-19, 64, 66; Exhibit 1)

Applicant is of Palestinian heritage. He immigrated to the United States from Jerusalem, Israel, on a Jordanian passport in 1982 to obtain a college degree. The Jordanian government issues passports to Palestinian residents of the West Bank territory, including Jerusalem, to allow them to travel. Applicant traveled on such a passport to get an education in the United States. He accomplished that goal in 1988, and returned to Jerusalem to care for his sick father who died in 1989. Then, he returned to the United States in 1990 to obtain his master’s degree. He never got

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

that degree. He married his first wife on December 12, 1990, and was divorced on January 8, 2001. His first wife is a U.S. citizen. His present wife has a Jordanian passport, an Israeli identification card, and grew up in Jerusalem. She has permanent residency status in the U.S. Their two children were born in the U.S. Applicant became a U.S. citizen on February 14, 1995. He has a U.S. passport. He cannot find his expired Jordanian passport. (Tr. 14-16, 32, 44, 48, 66, 77, 79; Exhibits 1-3)

Applicant's mother, sister, and three brothers live in Jerusalem, which is part of Israel. With his brothers and mother, he inherited in 1989 one-seventh of a house in Jerusalem, Israel, in which his mother, aged 86 years, and two brothers currently live. The house is valued at about \$140,000. Applicant's oldest brother in Jerusalem is a teacher, aged 60, and about to retire. His other brother is a building contractor with his own business. His youngest brother is an electrician. His sister is a housewife. None of them have worked for the government or served in an military organization. His mother gets a pension from the Israeli government, similar to the U.S. social security system, so Applicant does not send her money. Applicant also has two older brothers who are resident citizens of Jordan. They are retired from business. The oldest brother is in his 70s. The other brother is 68. They worked in Saudi Arabia, but retired to Jordan because Saudi Arabia would not allow them to become citizens. Applicant telephones his mother two or three times a month to speak with her. He speaks to his siblings if they are at home with his mother when he calls. He sees his two brothers in Jordan when he flies there for his triennial family visits and vacations. Applicant's wife's parents, sister, and three brothers live in Jerusalem. The youngest is a student, the other two work in private businesses. (Tr. 18, 21-29, 41, 52, 58; Exhibits 1-3)

Applicant traveled to Jerusalem to visit his mother in 2000, 2002, 2004, and March 2007. He also traveled there about every three years in the 1990s. When his mother dies, he doubts he will return to visit his siblings. When he travels to Jerusalem, he flies into Amman, Jordan, visits his two brothers, and then drives to Jerusalem. At the Israeli and Jordanian border, he obtains an Israeli identification card, as does his wife. They use that card while in Israel. He could use his U.S. passport to go to Jerusalem. If stopped by any police or security officials, he would show them the U.S. passport and the Israeli identification card. Applicant claims that the Israeli identification card will "not hurt at all", so he continues to use it whenever he visits his mother. They surrender it when they depart Israel and returns to the United States. During his visits, Applicant does not leave Israel, site-sees only in that area, and does not travel to the West Bank. (Tr. 30, 33-39, 52-58, 68; Exhibits 1-3)

I take administrative notice of the governments and political conditions at the present time in Jordan and Israel. Jordan is a constitutional monarchy and a developing economy. It has a pro-Western foreign policy. It has some human rights problems, including torture, arbitrary arrest and prolonged detention, overcrowded prisons, denial of due process. The threat of terrorism remains high in Jordan despite its efforts to pursue terrorists, prosecute them and disrupt terrorist plots. In November 2005, three hotels in Amman, Jordan, were bombed, after an August 2005, rocket attack and the 2002 assassination of a U.S. diplomat. Jordan issues West Bank residents five-year passports which do not connote citizenship. The Jordanian government grants these passports to post-1967 West Bank residents who are not citizens of Jordan, and are not allowed to become citizens. In 1988 the Jordanian government renounced all claims to the West Bank, but retained an administrative role. This action occurred after the 1967 War in which Israel seized the West Bank area from Jordan. (Exhibit 4, including the March 2007, State Department Report on human rights

practices in Jordan at pages 10 and 16 of 18, and the 2005 Foreign Economic Collection and Industrial Espionage Report)

Israel is a parliamentary democracy with an elected government. It has a diversified and technologically advanced economy. The United States is Israel's largest trading partner. Israel respects the human rights of its citizens, but there are some issues dealing with Palestinian detainees. U.S. citizens are urged by the State Department to exercise great caution in public places because of suicide bombings by terrorists fighting Israel and the U.S. support for Israel. Israel has close military ties with the United States. However, there are several issues of concern. Israeli military sales to the Peoples Republic of China, inadequate Israeli protection of U.S. intellectual property rights, and several espionage cases perpetrated against the United States by Israeli operatives. The 1985 Pollard case and the 2005 Franklin case are two espionage cases of particular note and concern. The theft of sensitive and proprietary information threatens the U.S. national security in military and economic terms. The National Counterintelligence Center's 2000 Report to Congress lists Israel as one of the active collectors of proprietary information. (Exhibit 4, including the March 2007, State Department Report on human rights practices in Jordan at pages 10 and 16 of 18, and the 2005 Foreign Economic Collection and Industrial Espionage Report)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because

each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline B: The Concern: 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. ¶6

Guideline C: The Concern: 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. ¶9

## CONCLUSIONS

**Foreign Influence:** Applicant's mother and six siblings reside in Jerusalem and Jordan. They are citizens of Jordan, or hold Jordanian passports without citizenship because they reside on the West Bank area and are Palestinians. Applicant visits his family routinely, about every two or three years. He returned most recently from a visit in March 2007. He owns one-seventh of a house in which his mother and some siblings currently reside in Jerusalem, and his interest he estimates at \$20,000. He flies into Amman, Jordan, whenever he visits his family. He telephones his mother two or three times per month. His wife has a Jordanian passport and is a citizen of Jordan. Her family members live in Jerusalem. She is a permanent resident of the U.S. Applicant became a U.S. citizen in 1995.

The four conditions that could raise a security concern and may be disqualifying under those facts and which are applicable here are: ¶7.a (contact 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); ¶7.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); ¶7.d (sharing living quarters with a person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion); and ¶7.e (a substantial business, financial, or property interest in a foreign country which could subject the individual to heightened risk of foreign influence or exploitation).

Two mitigating conditions may apply: ¶8.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 the foreign individual and the interests of the U.S.); and ¶8.b (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person 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. interests). Some of Applicant's family members are older than 60 years and retired. His wife's siblings are younger and working. Neither Applicant nor his wife send money to their parents. Their relationships are strictly familial, not business. But their families live in an area of the Middle East filled with terrorism and unrest, particularly directed against U.S. citizens. While Applicant contends he will not visit Jerusalem after his mother dies, his wife will continue to have her parents and siblings there. Therefore, ¶8.a cannot be applied. Applicant has been in the U.S. since 1982, and owns his house. He has been a citizen since 1995, but makes frequent trips to Jerusalem, every two or three years, exhibiting a continuing strong attachment to his family and birthplace. Therefore, ¶8.b cannot apply.

**Foreign Preference:** Applicant had a Jordanian passport. He claims it expired, and cannot locate it among his possessions. Therefore, its exact status and location are unknown. Applicant uses an Israeli identification card when he travels in the West Bank area to Jerusalem and within Israel for his family visits and vacations every two or three years. He finds that card more convenient to use than his U.S. passport. The card is held by the Israeli authorities during the interim period between Applicant's visits.

The condition that could raise a security concern and may be disqualifying here is ¶10.a.3 (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 accepting benefits from a foreign country, such as the Israeli identification card). Applicant clearly stated at the hearing he saw no harm in continuing to use the Israeli identification card for his travel within Israel. By doing so, he expresses a preference for that country's documents over his U.S. passport, and is disguising his U.S. citizenship for his own benefit. I considered the Mitigating Conditions under this Guideline C, and concluded none apply. I conclude the disqualifying conditions are not mitigated.

### **Whole Person Analysis**

“The 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.” AG ¶ 2(a). “Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” AG ¶ 2(a). In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

Of those factors, I conclude Applicant’s knowledgeable participation in traveling to Jordan and Jerusalem every two or three years to visit his family members who are citizens of those countries, and use of an Israeli identification card in preference to his U.S. passport, are two significant factors against Applicant. Applicant is old enough and educated to such a level that he knows if he has access to classified information he could be subject to coercion and other pressures by the Israeli government, a known collector of proprietary information. Applicant and his family are also in a delicate situation of being Palestinians living in the West Bank area under Israeli occupation, not being citizens of Israel or Jordan, thereby being subject to pressures from both governments and any Palestinian authorities or terrorists. Applicant intends to continue his travels to the area, visiting his family and taking vacations there, into the foreseeable future. Under the “whole person” concept Applicant has not shown that his conduct in the past or into the future would be responsible for someone with access to classified information.

Applicant has the burden of proof that the mitigating conditions under each guideline should be applied to his benefit over the disqualifying conditions. He has not met that burden. Therefore, I conclude the foreign influence security concern against Applicant. I conclude the foreign preference security concern amended into the SOR at the hearing against Applicant. Lastly, the “whole person concept” I conclude against Applicant because of his close family connections in Jordan and the West Bank, and his frequent and regular trips to those areas.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline C: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

**DECISION**

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 or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe  
Administrative Judge