DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 21-01509
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*
03/03/2023

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Decision

_____

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the Guideline B (foreign influence) security concerns raised by his foreign family members. Eligibility for access to classified information is denied.

History of Case

Applicant submitted security clearance applications (SCA) on May 24, 2012, and April 4, 2019. On June 7, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. He submitted an October 25, 2021, response to the SOR and requested a decision based upon the administrative record (Answer). Department Counsel converted the case to a hearing on November 16, 2021, and was ready to proceed on November 30, 2021. The case was assigned to me on December 2, 2021. On January 11, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 27, 2022. I convened the hearing as scheduled via video teleconference.

I marked the January 13, 2022 case management order as Hearing Exhibit (HE) I; Department Counsel's exhibit list as HE II; Department Counsel's November 16, 2021

discovery letter as HE III; Department Counsel's conversion as HE IV; the Government's Administrative Notice for the Hashemite Kingdom of Jordan (Jordan) as HE V; and the Government's Administrative Notice for the State of Israel (Israel) as HE VI. Government Exhibits (GE) 1 through 4 were admitted without objection, and Applicant testified. I received the complete transcript (Tr.) on February 11, 2022, and the record closed.

Administrative Notice

Applicant did not object to Department Counsel's request for administrative notice concerning Jordan and Israel as set forth in HE V and VI, respectively. Administrative or official notice is the appropriate type of notice used for administrative proceedings, and the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Amendment to the SOR

During the hearing, updated information regarding Applicant and his family was disclosed by him upon questioning. Department Counsel moved to amend the SOR, pursuant to Paragraph 17 of the Additional Procedure Guidance of the Directive, to amend SOR ¶¶ 1.a to 1.d to be:

1.a You are a citizen of the United States and a resident of Israel.

1.b Your mother and father are residents of Jordan and Israel and possess Jordan travel documents.

1.c Your brother is a resident of Jordan and Israel and possesses Jordan travel documents.

1.d Your two sisters are residents of Jordan and Israel and possess Jordan travel documents.

The remaining allegations were not amended. Applicant did not object to the amendment of the SOR allegations, and I granted the motion. He admitted the amended allegations. (Tr. 50-55)

Findings of Fact

Applicant is 52 years old. He was born in Israel on the West Bank, and was not a citizen of Israel, but was at the time considered a citizen of Jordan. He immigrated to the United States in 1989 to attend college. In 1997, he married his ex-wife in Israel, they separated in 2015, and their divorce was finalized in 2017. She was born in Canada to American citizens and is a dual citizen of both countries. They have two sons, who are 10 and 11 years old. They were both born in Qatar but are American citizens. In 1996, he received a Bachelor of Science in electrical engineering from a U.S. university. This is his first application for a security clearance; however, in 2007, he underwent a National

Agency Check with Inquiries (NACI). At the time of the hearing, Applicant was not employed, but he was sponsored by a company who intends to hire him as a translator. (Tr. 12, 20-21; GE 1-3)

After the September 11th attacks, Applicant and his ex-wife moved to Jordan to live with his family for approximately one year due to fears of anti-Muslim retaliation. They then moved to Qatar for her work. While living in Qatar, his wife was the primary wage-earner for their family. He became a naturalized U.S. citizen in 2003, as a result of his marriage to his ex-wife. Between 2007 and January 2015, he worked for defense contractors as a security escort and then as a security manager at an Air Force base, which required him to hold a NACI. (Tr. 22-30, 38, 56-57, 68-69, 81; GE 1-4)

According to Applicant's divorce paperwork, he and his wife separated in March 2016, when he left Qatar. He testified that he went to Jordan to receive financial assistance from his family. His father gifted him a piece of property in Jordan worth approximately $200,000, which he sold, and used, in part, to pay for his divorce attorneys. He then returned to the United States to start the divorce proceedings. He was unemployed from January 2015 to July 2016. (Tr. 22-30, 38, 56-57, 68-69, 81; GE 1-4)

As noted above, Applicant's wife is a dual citizen of the United States and Canada, and when she left Qatar, she filed for divorce in Canada. Based upon the recommendations of Applicant's attorney, he found a job in State A in July 2016, rented a two-bedroom apartment there, and purchased a vehicle. Between his March 2016 and July 2016, he supported himself with the money left over from selling the Jordanian property gifted to him from his father. As stated above, Applicant has been unemployed since January 2017. In October 2017, he returned to Jordan to reside with his father, who currently provides him approximately $2,500 a month to pay his expenses. (Tr. 29-37; GE 1-4)

Applicant has not resided in the United States since October 2017. He returned to the U.S. one time, in 2019, to be interviewed for his security clearance. (He listed on the 2019 SCA his sister's address in State B as his permanent address, but he has never resided there.) For his SCA he provided his sister's address in State B as his permanent address, but he has never resided there. He resided in Jordan with his father from October 2017 to January 2021. He then moved to Israel with his father, where he lived as of the hearing date. His father has continued to financially support him since 2017. Applicant does not have a bank account or a credit card, and when he needs money, his father gives him cash. (Tr. 38-41; GE 1; GE 3)

In Applicant's 2019 SCA, he disclosed the following visits to his family in Jordan during the previous seven years: 3/12-4/12; 6/13; 5/14-6/14; 7/15; 1/16; 3/16; and 6/16. During Applicant's May 2019 interview, the government investigator reviewed his U.S. passport (valid from October 2008 to October 2018) and noted the following stamps from Jordan: 10/09; 6/10; 7/10; 9/10; 11/10; 3/11; 6/11; 7/11; 11/11; 12/11; 6/13; 3/16; 4/16; 5/16; and 10/17. (GE 1; GE 3)

When Applicant completed his 2019 SCA, he anticipated he would inherit $1,000,000 in assets from his father's estate in Jordan and Israel. At one time his father owned the only insurance company in Israel and owned an extensive real estate portfolio.

> "I know my dad is rich, but my dad is secretive. [H]e likes to help his kids, but he doesn't mention what he's got. [W]hen I went to Jordan, I realized he's richer than what I thought. And when I came to Israel I … now know he's … richer than what I thought in Jordan even."

At the time of the hearing, Applicant estimated he would inherit assets in Jordan and Israel worth approximately $1.5 million. (Tr. 42-43; GE 3)

When Applicant was born in Israel, he was issued a Jordanian passport. Because he was born on the West Bank in Israel and he is not Jewish, he cannot be a citizen of Israel. His Jordanian passport or travel document (he has made inconsistent statements regarding the document) expired in 2018. His Israel identification card does not have an expiration date. He cannot live in Israel without it, and he must show it with his U.S. passport when he enters and exits Israel. (Tr. 44-46, 72-74; GE 1; GE 3)

Applicant's parents, brother, and sisters reside in both Jordan and Israel. His parents own land in both countries, and his brother lives in part of their parents' home in Israel. Their homes in the two countries are approximately one hour apart. Two of his sisters reside in Jordan and Israel. None of his family members work for either the Jordanian or the Israeli governments. (Tr. 48-54, 72)

At the hearing, Applicant denied having close ties to his family residing in Jordan and Israel, including his parents who provide him complete financial support and with whom he resides. However, due to living with his parents, he does speak to his siblings when they call his parents, and his brother resides in the same building. Additionally, Applicant provides hourly care to his father and is essentially his caretaker. "I'm by myself 24/7 except my dad. I'm helping my dad. I don't go anywhere. I don't go out. I don't talk to anybody because the place is dangerous anyways." He testified that he has no ties or affection to Jordan and Israel and his allegiance is to the United States. (Tr. 55-56, 60-62, 75)

Applicant has one sister who resides in the United States with her family; however, she also owns property in Israel. He has an uncle and cousins who live in the United States. His sons are U.S. citizens, but he does not know where they are currently residing. According to Applicant, they could be living in the U.S, Canada, or Australia. He does not pay his ex-wife child support, and the last time he saw his sons was in 2015. According to their 2016 divorce paperwork, his children were residing in Canada at that time. His only asset in the U.S. is a bank account with a $100 balance. (Tr. 58, 61, 65-68; GE 4)

Jordan

Jordan is a nation in the Middle East, and it is governed by a constitutional monarchy ruled by a king who has ultimate executive and legislative authority. The United States has a long history of cooperation and friendship with Jordan and appreciates the leadership role Jordan plays in advancing peace and moderation in the region.

Jordan remains at high risk for terrorism. Local, regional, and transnational groups and extremists have demonstrated a willingness and capacity to plan and execute attacks in Jordan. The current travel advisory from the U.S. State Department is Level 3 – reconsider travel due to COVID-19. The U.S. involvement in Iraq and Syria and the U.S. government's policies regarding Israel led more than 80% of Jordanians to hold an unfavorable opinion of the U.S. government, although the anti-Western sentiment did not extend to U.S. citizens or culture generally. Significant human rights issues occur in Jordan as well.

Israel

Israel is a nation in the Middle East, and it is governed by a multiparty parliamentary democracy. Israel and the United States have historically strong bilateral relations and ties, including cooperation on defense and security matters. With that said, U.S. officials remain concerned about the potential for Israeli espionage.

There is a significant level of terrorism threat directed at or affecting official U.S. Government interests in Israel. Numerous terrorist attacks or incidents involving foreign terrorist organizations have occurred over the last several years.

The State Department advises not to travel to Israel due to COVID-19; and it warns to exercise increased caution due to terrorism and civil unrest. Additionally, all persons entering and departing Israel, the West Bank, Gaza are subject to immigration and security screening, which may include search of their personal devices and data.

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 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, administrative judges apply the guidelines 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(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 national security eligibility will be resolved in favor of the national security."

According to 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

> Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure

> or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline includes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

> (a) contact, regardless of method, 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;
>
> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
>
> (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's parents, brother, and two of his sisters are residents of Jordan and Israel. He is currently a resident of Israel, residing with his parents, and from October 2017 to January 2021, he was a resident of Jordan, residing with his parents.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

The mere possession of close family ties with people living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person 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* ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of that applicant's father in Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939

at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

For Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The situations in Jordan and Israel involving terrorists, criminals, and insurgents in those countries place a significant burden of persuasion on Applicant to demonstrate that her relationships with any family members living in or visiting them do not pose a security risk because of the risks of violence and coercion in those countries. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting someone living in, visiting, or associated with Jordan and Israel.

The Appeal Board in ISCR Case No. 03-24933, n. 18 (App. Bd. July 28, 2005), explained how relatives in a foreign country have a security significance:

> The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security concerns because those ties and contacts create a potential vulnerability that a foreign power, [criminals, or terrorists] could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

Guideline B security or trustworthiness concerns are 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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 02-22461, (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

Applicant's relationships with people who are living in Jordan and Israel or visiting those countries create a potential conflict of interest because terrorists, criminals, or government officials could place pressure on people in those countries in an effort to cause Applicant to compromise classified information. Those relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with people living in those countries and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

> (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 United States;
>
> (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
>
> (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;
>
> (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;
>
> (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As indicated in the disqualifying conditions Foreign Influence section, *supra*, Applicant has several family members who are residents of Jordan and Israel.

Applicant is a citizen of the United States residing in Israel, and he recently resided in Jordan for several years. He lived in Jordan for a year from 2001 to 2002. He became a naturalized U.S. citizen in 2003. There is no record information regarding his visits to Jordan or Israel between 2002 and 2009. He visited his family numerous times in Jordan between 2009 and 2017, when he permanently moved to Jordan to live with his parents who financially support him. He has ongoing, continuous, and frequent contact with his family members in Jordan and Iraq through his residence with his parents.

Applicant's living with his parents qualifies as frequent contact. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has minimal assets in the U.S., and except for one sister and her family, an uncle and some cousins, the remaining members of his family of origin reside in Jordan and Israel. His children currently reside in Canada with his ex-wife, and he has no contact with them, and appears to provide no financial support to them.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with relatives who are residents of Jordan and Israel. Applicant has close relationships with family, and they are at risk from criminals, terrorists, and human rights violations of the Jordanian and Israeli governments. Applicant's access to classified information could add significant risk to his relatives and contacts living in Jordan and Israel.

In sum, Applicant's connections to his relatives and contacts residing in Jordan and Israel are significant, and he has insignificant financial connections and familial connections to the United States; therefore, they are insufficient to overcome the foreign influence security concerns under Guideline B.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

A Guideline B decision concerning Jordan and/or Israel must take into consideration the geopolitical situation and dangers in those countries. *See* ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Those countries are dangerous places because of violence from terrorists and criminals, and their governments do not respect the full spectrum of human rights.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge