

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is employed by a federal contractor. He is a native of Jordan, now a naturalized U.S. citizen. His wife and children are native-born U.S. citizens residing in the U.S. His parents and eight siblings are citizens of and reside in Jordan. He surrendered his Jordanian passport and has renounced his Jordanian citizenship, thereby mitigating security concerns about foreign preference. Under the "whole person concept," he successfully mitigated security concerns about foreign influence. Clearance was granted. The government appealed. The Appeal Board remanded the decision. After additional findings of facts and conclusions, I again conclude that Applicant successfully mitigated the security concerns under Guideline B (foreign influence.) Clearance is granted.

CASENO: 04-11414.h1

DATE: 04/06/2007

DATE: April 6, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 04-11414
	)	
Applicant for Security Clearance	)	
	)	

**REMAND DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

Laura J. Anderson, Esq.

## SYNOPSIS

\_\_\_\_\_ Applicant is employed by a federal contractor. He is a native of Jordan, now a naturalized U.S. citizen. His wife and children are native-born U.S. citizens residing in the U.S. His parents and eight siblings are citizens of and reside in Jordan. He surrendered his Jordanian passport and has renounced his Jordanian citizenship, thereby mitigating security concerns about foreign preference. Under the “whole person concept,” he successfully mitigated security concerns about foreign influence. Clearance was granted. The government appealed. The Appeal Board remanded the decision. After additional findings of facts and conclusions, I again conclude that Applicant successfully mitigated the security concerns under Guideline B (foreign influence.) Clearance is granted.

## STATEMENT OF THE CASE

On August 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR alleged reasons under Guidelines B (foreign influence) and C (foreign preference) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

In a written statement dated August 24, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to another administrative judge on October 20, 2005, and was reassigned to me on November 7, 2005, due to caseload considerations. A Notice of Hearing was issued November 10, 2005, scheduling the hearing for December 14, 2005. The hearing was held as scheduled. At the hearing, the government offered six exhibits and Applicant submitted three exhibits. Applicant called two witnesses and he testified in his own behalf. I kept the record open until January 16, 2006. Applicant submitted Exhibits D-G on January 16, 2006. Department Counsel offered no objection. I admitted Exhibits D-G in evidence. The transcript (Tr.) was received December 28, 2005.

I issued a decision on June 16, 2006. Department Counsel appealed my decision. However, Department Counsel’s brief and any brief filed by Applicant’s counsel were not included in the file. The Appeal Board issued a decision remanding the case to me on March 5, 2007.

The Appeal Board’s remand concludes that I committed factual error by not making a finding about the presence of terrorist groups in Jordan, and that I should weigh this fact in my analysis.<sup>1</sup> The additional facts concerning terrorism in Jordan are at page 5, *infra*. The Appeal Board determined that the facts cited in my decision were supported by substantial evidence.<sup>2</sup>

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<sup>1</sup>ISCR Case No. 04-11414 at 3 (App. Bd. Mar. 5, 2007).

<sup>2</sup>*Id.*

In regard to my “whole person analysis” the Appeal Board determined that it was “too narrowly focused” and “unreasonably conclusory.”<sup>3</sup> The Appeal Board suggested that my opinion address “evidence of an applicant’s personal loyalties, the nature and extent of an applicant’s family ties to the U.S. relative to his ties to a foreign country; his or her social ties within the U.S., and many others raised by the facts of a given case.”<sup>4</sup> The Appeal Board in its decretal paragraph directed:

We remand the case to the Judge for a new opinion, one which takes into account the errors which the Board has identified and one which includes a more detailed whole person analysis, an analysis which takes into account record evidence about dangers existing in Jordan insofar as they have a bearing upon the potential for coercion. Also, as appropriate, it should detail and explain Applicant’s pertinent qualities, characteristics, and circumstances which are the basis for the Judge’s ultimate decision.<sup>5</sup>

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### **FINDINGS OF FACT**

Applicant admitted the allegations in SOR subparagraphs 1.c., 1.d., and 2.a.<sup>6</sup> All other allegations were denied. His admissions are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is a 46-year-old employee of a federal contractor.<sup>7</sup> He immigrated to the U.S. from Jordan at the age of 18.<sup>8</sup> He never served in the Jordanian military. After coming to the U.S. he earned a degree in electrical engineering. He became a U.S. citizen on November 12, 1985.<sup>9</sup> He met his wife, a native-born American, while in college. They have been married 24 years and have 4 children.<sup>10</sup> They have no financial interests outside the U.S.<sup>11</sup>

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<sup>3</sup>*Id.* at 4.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* at 5.

<sup>6</sup>Applicant’s Exhibit C (Amended Answer to Statement of Reasons, dated December 14, 2005) at 1.

<sup>7</sup>Government Exhibit 1 (Standard Form 86 (SF 86) *Security Clearance Application*, dated April 8, 2003) at 1.

<sup>8</sup>Tr. 11 is the source for the information in this and the next two sentences.

<sup>9</sup>Government Exhibit 1, *supra* n. 2, at 2.

<sup>10</sup>*Id.* at 23-24.

<sup>11</sup>*Id.* at 45.

Each time he and his family members have traveled to Jordan (1991, 1999, and 2002) they have used U. S. passports.<sup>12</sup> In 1991, the trip was to visit relatives.<sup>13</sup> His wife has not been to Jordan since.<sup>14</sup> In 1999, he took his oldest son and oldest daughter to see sites and visit relatives.<sup>15</sup> His final trip in 2002, was a religious pilgrimage to Saudi Arabia.<sup>16</sup> His plane route took him through Jordan so he stopped to visit his relatives for 3 or 4 days.<sup>17</sup> All of his trips have been properly reported to his employer's security officials.<sup>18</sup>

All of his immediate family (except the youngest child) had Jordanian passports and were considered Jordanian citizens because he was Jordanian. Those passports are expired and have not been renewed.<sup>19</sup> He renewed his in 1999. It expired in 2004.<sup>20</sup> In a DSS interview, he said he was willing to renounce his Jordanian citizenship and that he had no intention of renewing his Jordanian passport.<sup>21</sup> On December 5, 2005, Applicant took the affirmative action of renouncing his Jordanian citizenship. He mailed a letter stating his renunciation and surrendered his expired passport and sent it to the Jordanian Embassy in Washington, DC.<sup>22</sup> The embassy returned his letter and passport and demanded \$2,000 per person/passport to accept and officially cancel each passport.<sup>23</sup> He cannot afford \$2,000.00 or a total of \$10,000.00 to send each passport for renunciation. The payments must be mailed to Jordan, not the Jordanian Embassy in the U.S.<sup>24</sup>

He has no intention of buying property in Jordan, now or in the future.<sup>25</sup> His parents and eight siblings are citizens of and reside in Jordan.<sup>26</sup> A ninth sibling lives in the U.S. but is still a

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<sup>12</sup>*Id.* at 34,86.

<sup>13</sup>*Id.* at 51.

<sup>14</sup>*Id.* at 50, 83.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.* at 56-58.

<sup>17</sup>*Id.* at 41.

<sup>18</sup>*Id.* at 45.

<sup>19</sup>*Id.* at 37.

<sup>20</sup>*Id.* at 35.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.* at 32-34, 46; Applicant's Exhibit B (Letter Renouncing Citizenship, dated December 5, 2005) at 1-2.

<sup>23</sup>Applicant's Exhibit F (Translation of Response of Jordanian Embassy to Applicant's Letter ) at 1-4.

<sup>24</sup>Applicant's Exhibit D (Applicant's Affidavit, dated January 16, 2006) at 1-2.

<sup>25</sup>Tr. at 47, 54-55.

<sup>26</sup>Applicant's Exhibit C, *supra* n. 2, at 1.

Jordanian citizen.<sup>27</sup> His parents own a coffee roasting and spice shop.<sup>28</sup> His siblings are in private business. None are employed by or dependant on the Jordanian government.<sup>29</sup> He talks with his mother once per month, he has no contact with his siblings except when he has been in Jordan, and he never discusses his work with any of them.<sup>30</sup>

The Kingdom of Jordan is a constitutional monarchy.<sup>31</sup> Jordan has a history of excellent relations with the U.S. Jordan also is more moderate than its Arab neighbors in allowing persons other than Muslims to practice their faiths, especially the country's Christian minority.<sup>32</sup> Jordan is on friendly terms with the United States. The Jordanian Embassy states: "Jordan values its friendship with Congress and is appreciative of the bipartisan support that the Kingdom has seen from Congress over the past several years. Particularly the efforts of Congress and the administration to write off Jordan's debt to the U.S. and to increase assistance to the Kingdom....The Jordanian constitution expresses the importance of human rights in a whole chapter entitled "The Rights and Duties of Jordanians." It safeguards the rights of Jordanians of all origins including minorities, providing that "Jordanians shall be equal before the law. There shall be no discrimination between them with regards to their rights and duties on grounds of race, language, or religion."<sup>33</sup>

### **Terrorist Activity in Jordan**

Consular Information Sheet, *Jordan*, U.S. Department of State, provides information about problems with terrorism in Jordan, stating:

Recent worldwide terrorist alerts stated that extremist groups continue to plan terrorist attacks against U.S. interests in the region. In 2005, Jordanian authorities made a number of arrests of persons charged with plotting to attack Western targets, including tourists. Since late 1999, there has been a series of serious, confirmed terrorist threats and disrupted terrorist plots targeting U.S. interests in Jordan. In April 2004, Jordanian authorities disrupted a plan to attack the U.S. Embassy and Jordanian leadership sites with explosive-laden vehicles. An American diplomat was assassinated in October 2002. The ongoing violence in Israel, the West Bank, and Gaza continues to have an impact on the security climate in Jordan. Pro-Palestinian demonstrations have occurred periodically throughout Jordan since violence between Israelis and Palestinians broke out in September 2000. Anti-U.S. sentiments are often in evidence at demonstrations and protests. While these protests are mostly

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<sup>27</sup>*Id.* at 52, 58.

<sup>28</sup>*Id.* at 44, 52.

<sup>29</sup>*Id.* at 43.

<sup>30</sup>*Id.* at 44-45.

<sup>31</sup> Applicant's Exhibit A (Embassy of Jordan, *U.S. - Jordan Relations*, December 2005) at 1, 18.

<sup>32</sup>*Id.* at 27.

<sup>33</sup>Tr. at 23.

nonviolent or effectively contained by local authorities, Americans should avoid traditional gathering places such as universities, refugee camps, and city centers at times of significant political unrest. The Jordan/Iraq border crossing was targeted by Iraqi-based terrorists utilizing vehicle bombs in December 2004. American and U.S. facilities, as well as sites frequented by Americans (including tourist attractions, places of worship, expatriate residential areas, hotels, restaurants, and clubs), may be the target of terrorist groups.<sup>34</sup>

### **Applicant's Connections to the United States**

Applicant is 46 years old, and has lived in the United States for 28 years, his whole adult life.<sup>35</sup> He attended college in the United States. He has been a U.S. citizen for 21 years. He met his wife, a native-born American, while in college. They have been married 24 years and have 4 children, age 20, 18, 15 and 9. All four of his children were born in the United States, live in the United States and are citizens of the United States. He has one brother who lives in the United States.

They bought a house in the United States in 1997, and his wife has taught mathematics in a public school in the United States since 1998.<sup>36</sup> All four of his children are attending school in the United States - two are attending college. Applicant has never been arrested.

Applicant and his wife are the block watch captains for their block. They pay their bills on time, have a good credit rating, own an apartment building, and have U.S. stock investments.<sup>37</sup> They have a United States checking account, savings account and 401K account.<sup>38</sup> When there is a U.S. election they vote in it.<sup>39</sup> Their children speak very little Arabic, and it is not spoken around the home.<sup>40</sup> He has worked for large government contractors as an engineer for many years.<sup>41</sup>

Applicant's manager, who has worked for the contractor for 28 years, and worked with Applicant for three years described him as follows: "Applicant is an excellent example of a representative for the [contractor]. He is very intelligent. He knows his business. He handles

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<sup>34</sup> Applicant's Exhibit A (Consular Information Sheet, *Jordan*, U.S. Department of State, December 12, 2005) at 24-25.

<sup>35</sup>This paragraph is essentially a replication of the facts in the previous decision. The ages of his children are at Tr. 23. The last sentence is from Tr. 58.

<sup>36</sup>The facts in this paragraph are from Government Exhibit 4 at 3 and Tr. 24.

<sup>37</sup>Tr. 81-82.

<sup>38</sup>He indicated he had no foreign accounts. I conclude therefore when he testified about his accounts that they were all in United States financial institutions, even though he did not explicitly so indicate. *Id.* at 25.

<sup>39</sup>*Id.* at 55.

<sup>40</sup>*Id.* at 51.

<sup>41</sup>*Id.* at 28-32.

himself very well in front of people. He is self motivated. He works hard. He does not speak freely on a large number of things, as some people do, and he's been a very good worker for me. He has taken all of the periodic security courses that we have to make sure that he handles all the information in a proper and secure fashion. And to my knowledge, has always been discreet and understanding of all the requirements that are put on him."<sup>42</sup> He also described Applicant as a person who scrupulously complies with all security requirements.<sup>43</sup>

## POLICIES

"[No] one has a 'right' to a security clearance."<sup>44</sup> 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."<sup>45</sup> The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."<sup>46</sup> Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.<sup>47</sup> 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.<sup>48</sup>

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<sup>42</sup>*Id.* at 60-61, 68,70.

<sup>43</sup>*Id.* at 67-69.

<sup>44</sup>*See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

<sup>45</sup>*Id.* at 527.

<sup>46</sup>Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

<sup>47</sup>*Egan, supra*, at 531.

<sup>48</sup>*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a its case, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>49</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>50</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the Government.<sup>51</sup> Decisions under this Directive include, by necessity, consideration of the possible risk an 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, not actual, risk of compromise of classified information.

Applicant’s allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security 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.” Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline B (foreign influence) E2.A2.1.1. *(A security risk may exist when an individual’s immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure); and*

Guideline C (foreign preference) E2.A3.1.1. *(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).*

## CONCLUSIONS

### **Foreign Influence**

A security risk may exist when an applicant’s immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U. S., or may be

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<sup>49</sup>See ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>50</sup>*Id.*, at 3.

<sup>51</sup>See *Egan*; Directive ¶ E2.2.2.



subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

The government has established its case under Guideline B. Applicant's parents and eight of nine siblings are citizens and residents of Jordan. Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) is applicable.

Under the Directive, potentially disqualifying conditions may be mitigated through the application of the "whole person" concept and specific mitigating conditions. When the Government produces evidence raising potentially disqualifying conditions, an Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the conditions.<sup>52</sup> The government never has the burden of disproving a mitigating condition.<sup>53</sup>

Foreign Influence Mitigating Condition (FIMC) E2.A2.1.3.1. provides (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*). Notwithstanding the facially disjunctive language of FI MC 1, the Appeal Board has decided that Applicant must prove that his family members, cohabitant or associates are not agents of a foreign power, **and** are not in a position to be exploited by a foreign power in a way that could force Applicant to chose between the person(s) involved and the U.S.<sup>54</sup> [*emphasis added*]

Applicant's brothers, sisters, and parents do not meet the definition of "agent of a foreign power" under 50 U.S.C. §§ 438(6) and 1801(b). Similarly, they would not be considered as an "agent of a foreign power" under the more expansive definition adopted by the Appeal Board. The available evidence indicates his brothers, sisters, and parents have no ties to or economic dependence upon the Jordanian government. The Appeal Board described my mentioning of 50 U.S.C. §§ 438(6) and 1801(b) as a "problematic statement." The statutory definition for "agent of a foreign power" was explicitly included in Executive Order 12968, Aug. 2, 1995, Part 1.1f, which established, "a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information." The Appeal Board's decision<sup>55</sup> reiterating the broad definition of "agent of a foreign power" does not address why Executive Order 12968 is not controlling.<sup>56</sup>

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<sup>52</sup>Directive, ¶ E3.1.15.

<sup>53</sup>ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>54</sup>ISCR Case No. 02-14995 at 5 (App. Bd. July 26, 2004).

<sup>55</sup>ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 7, 2007).

<sup>56</sup>See ISCR Case No. 04-03720 at 4 (App. Bd. June 14, 2006); ISCR Case No. 04-02233 at 3 (App. Bd. May 9, 2006), see generally *Nickelson v. United States*, 284 F.Supp.2d 387, 391 (E.D. Va. 2003) (requiring agency to follow own rules in security clearance determinations). See ISCR Case No. 02-21927, 2006 DOHA Lexis 229, at \*15-\*45 (A.J. May 17, 2006) and ISCR Case No. 03-10312 at 6-9 (A.J. May 31, 2006) (discussing the parameters and application of

Most importantly, I did not then and now reiterate that despite my reservations about the correctness of the Appeal Board's approach I unconditionally agree that I am bound by the Appeal Board's jurisprudence. My previous decision accepted the Appeal Board's decision, and this remand accepts the Appeal Board's decision about the non-applicability of 50 U.S.C. §§ 438(6) 1801(b).

The second prong of the test is whether the relatives in question are "in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States."<sup>57</sup> The federal statute, 50 U.S.C. § 1801(a), defines "foreign power" to include: a foreign government; a faction of a foreign nation; an entity openly acknowledged by a foreign government to be controlled by that foreign government; a group engaged in international terrorism; a foreign-based political organization; or an entity directed and controlled by a foreign government.

However, as discussed above, in order to apply the second prong of FI MC E2.A2.1.3.1., the Appeal Board requires that applicants affirmatively prove that there is no possibility that anyone would attempt to exploit a foreign relative in the future.<sup>58</sup> This is an impossibility as there is never a 100% guarantee that a government would not exploit its own citizens - even in the U.S. The standard should be a "reasonable possibility" because adopting the "impossibility" standard acts to nullify FI MC E2.A2.1.3.1.<sup>59</sup>

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FI MC 1, especially the scope and definition of "agent of a foreign power").

<sup>57</sup>Directive, ¶ E2. A2. 1.3.1.

<sup>58</sup>See ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) ("[FI MC] 1 does not apply because, as is well settled, it requires that Applicant demonstrate that his relatives are not in a position which could force Applicant to choose between his loyalty to them and his loyalty to the United States."); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005).

<sup>59</sup>The Appeal Board correctly stated that I included the following sentence in my decision, "[T]he Appeal Board prohibits any consideration of evidence that is not dispositive of the issue," and then stated, "This Board places no such limitation on the admission or consideration of evidence, the Directive requiring that '[each clearance decision must be a...common sense determination based on consideration of all relevant and material information.]' ¶ 6.3. Compare ISCR Case No. 04-11571 at 2-3 (App. Bd. Feb 8, 2007)." ISCR Case No. 04-11414 n. 5 at 4 (App. Bd. Mar. 5, 2007).

I agree with the Appeal Board that my statement about admissibility was incorrect. In regard to FI MC 3, the Appeal Board has determined that contacts with relatives living in a foreign country must be both casual and infrequent. See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). Moreover, contacts with such family members are presumed to be "not casual." *Id.* In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in the foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the [foreign] government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in the foreign country is sufficient to negate FI MC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003)), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the U.S. (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)); and an applicant's "refusal to travel to Iran" and "meticulous work habits

Another less significant reason not to apply FI MC E2.A2.1.3.1. is the history of terrorist activity in Jordan. The Appeal Board has limited the applicability of FI MC E2.A2.1.3.1. where there is a history of terrorist activity in the foreign country in question.<sup>60</sup> There is no question that terrorist organizations operate in the country of Jordan. Applicant's family living in Jordan are subject to terrorist activities at any time. Are they at any greater risk if Applicant holds a security clearance? Probably not. Terrorists strike at different targets, at different times, often in random locations, and the fear that arises from these attacks is primarily based on that randomness - not knowing where or when an attack might occur. But the terrorist activity in Jordan is not state-sponsored terror by the Jordanian government. The government of Jordan is as much a victim of terrorist activity as are its citizens. Applicant and his family living in the United States are just as great at risk from random terrorist activity as evidenced by the bombing of the Oklahoma City federal building as well as the events that occurred on September 11, 2001. Terrorist attacks are increasing world-wide: Spain; Great Britain, Israel, Jordan, Iraq, Indonesia, Russia, Japan, United States, Lebanon, Egypt, and Northern Ireland have experienced terrorist activities in recent years. Unfortunately, terrorism is a part of life at this period of the 21<sup>st</sup> century. The fact that terrorists operate in Jordan has no more bearing on Applicant's suitability for a security clearance than does the fact that terrorist organizations have operated in the United States.

Under the Directive, FI MC E2.A2.1.3.3., it may be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant's contact with his siblings has been casual, isolated and infrequent. Although there is a presumption that contacts with family members are not casual, he has seen his family three times in about twenty years. He does not call them or exchange email's with them. I find this to be casual contacts. But he has regular and frequent contact with his mother. This potentially mitigating condition does not apply.

I conclude that no Guideline B Mitigating Conditions apply, and I expressly and specifically indicate that I have not relied "explicitly or implicitly" on any of the Mitigating Conditions listed under Guideline B of the Directive.<sup>61</sup>

### **Foreign Preference**

\_\_\_\_\_ The Government has established its case under Guideline C by showing that Applicant has exercised dual citizenship with Jordan by possessing a Jordanian passport. Therefore, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.2. (*The exercise of dual citizenship*) and E2.A3.1.2.2. (*Possession and/or use of a foreign passport*) apply. The SOR subparagraph 2.c. alleges that Applicant maintains dual citizenship so he can acquire property in Jordan in the distant future. FP DC E2.A3.1.2.6. (*Using foreign citizenship to protect financial or business interests in another country*). He successfully refuted that allegation and FP DC E2.A3.1.2.6. does not apply.

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and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)).

<sup>60</sup>ISCR Case No. 03-22643 (App. Bd. Jun. 24, 2005); ISCR Case No. 02-22461 at 5 (App. Bd. Oct. 22, 2005).

<sup>61</sup>See ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 7, 2007).

The DoD Money Memorandum<sup>62</sup> of August 16, 2000, clarifies DoD policy regarding the possession and/or use of foreign passports. It requires that “any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.” Under the Money Memorandum, possession and/or use of a foreign passport is not mitigated by reasons of personal convenience, safety, requirements of foreign law, or the identity of the foreign country. Applicant’s passport expired in 2004. Therefore, the Money Memorandum does not apply. Notwithstanding, Applicant took the affirmative act of writing a letter renouncing his citizenship and surrendering his expired passport and mailed it via UPS next day air.<sup>63</sup> He did this to be absolutely sure he demonstrated a good-faith intention to renounce his citizenship, and the subsequent rejection by Jordan should not be considered against him.

Foreign Preference Mitigating Condition E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) is applicable. All that is required is an intent to renounce citizenship. The act of mailing his letter and passport is clear intent to revoke. Accordingly, I find Guideline C for Applicant.

## Whole Person Analysis

The “whole person” concept is the heart of the analysis of whether an applicant is eligible for a security clearance.<sup>64</sup> Indeed, the Appeal Board has repeatedly held that an administrative judge may find in favor of an applicant where no specific mitigating conditions apply.<sup>65</sup>

In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. As noted above, ¶¶ E2.2.1, E2.2.2, and E2.2.3 of the Directive specifically require each administrative judge to consider all the facts and circumstances, including the “whole person” concept, when evaluating each individual case. To ignore such evidence would establish a virtual per se rule against granting clearances to any person with ties to persons in a foreign country, contrary to the clear terms of the Directive. “Although the position of an applicant’s foreign family members is significant and may preclude the favorable application of FIMC E2.A2.1.3.1., the totality of an applicant’s conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors.”<sup>66</sup>

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<sup>62</sup>Memorandum, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, subject “*Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*,” August 16, 2000. It is known administratively as the ‘Money Memorandum’ because it was issued by Arthur L. Money, Assistant Secretary of Defense. It is also known as the ASD C3I Memorandum.

<sup>63</sup>Applicant’s Exhibit B, *supra*, at 2.

<sup>64</sup>Directive, ¶ E2.2.3.

<sup>65</sup>ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).

<sup>66</sup>ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).

The “potential for pressure, coercion, exploitation, or duress”<sup>67</sup> is an important factor weighing against grant of a security clearance for Applicant. The character of Jordan’s government, including the government itself, entities controlled by Jordanian government, and terrorism are relevant. However, this factor is not determinative; it is merely one of many factors which must be considered. Of course, nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>68</sup> The Appeal Board repeatedly warns against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”<sup>69</sup> It is well understood that “[t]he 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.”<sup>70</sup> Distinctions between friendly and unfriendly governments must be made with extreme caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Moreover, even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, friendly nations have engaged in espionage against the United States, especially in economic, scientific, military, and technical fields.<sup>71</sup> The relationship between a foreign government and the U.S. is relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the U.S. through the Applicant. The nature of the foreign government might also relate to the question of whether the foreign government or an entity it controls would risk jeopardizing its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray this country.

Applicant’s connections to Jordan are very limited. His children and spouse are not citizens of Jordan. His children speak very little Arabic, and they do not speak any around the home. He does not own property in Jordan.

A friendly relationship between the United States and Jordan is not determinative, but it may make it less likely that a Jordan would attempt to exploit a U.S. citizen through his relatives or associates.<sup>72</sup> His family members currently residing in Jordan are vulnerable to pressure and coercion; although they have no connection to or dependence upon a foreign power, they are still under the physical control of the Jordanian government. Moreover, there is a threat of terrorism in Jordan. Applicant’s eight siblings and parents live in Jordan and are therefore vulnerable. Although there is no evidence of any connection between terrorists and Applicant’s family members in Jordan,

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<sup>67</sup>Directive, ¶ E2.2.1.8.

<sup>68</sup>See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

<sup>69</sup>ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

<sup>70</sup>ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>71</sup>ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

<sup>72</sup>ISCR Case No. 03-21423 at 7-10.

the terrorists could learn of Applicant's family and then target them to pressure Applicant.<sup>73</sup> But that is a possibility of Applicant's immediate family living in the U.S.

Weighing in support of grant of a security clearance are Applicant's close connections to the United States. His wife and four children are native-born citizens and residents of the United States. They have received and continue to benefit from the liberties and protection afforded U.S. citizens. He is 46 years old, and is mature and responsible. He has lived in the United States for 28 years, his whole adult life. He attended college in the United States, and has been a U.S. citizen for 21 years. He has been married 24 years—a strong and stable relationship. He has one brother who lives in the United States.

They have significant economic connections to the United States. They bought a house in the United States in 1997. They pay their bills on time, have a good credit rating, own an apartment building, and have U.S. stock investments. They have a United States checking account, savings account, and 401K account.

Applicant is a law abiding person. He has never been arrested. His track record of compliance with the law supports a conclusion that he will continue to abide by the law, especially national security law.

Applicant and his wife are involved in their local community. They are block watch captains for their block. When there is a U.S. election they vote in it. He has worked for government large commercial contractors as an engineer for many years, and his wife has been a public high school teacher for about a decade.

Applicant's manager, who has worked for the contractor for 28 years, and worked with Applicant for three years described him as an excellent employee, who complies with security requirements.

Applicant's record of successful employment, the good relationship between Jordan and the United States, and the Jordanian government's respect for human rights, make it unlikely that he would be vulnerable to improper influence.

Most importantly, it is necessary to consider Applicant's vulnerability to exploitation through his relatives. Applicant is a mature individual with almost twenty years of successful employment in this country. He is a U.S. citizen and was educated in this country. Applicant has strong ties to the United States. Because of Applicant's deep and long-standing relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the United States. I am confident that he would report any attempt of coercion by terrorists to U.S. authorities. I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk.<sup>74</sup>

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<sup>73</sup>See ISCR Case No. 03-22643 (App. Bd. Jun. 24, 2005); ISCR Case No. 02-22461 at 5 (App. Bd. Oct. 22, 2005).

<sup>74</sup>Directive, ¶ E2.2.1.8.

I observed Applicant during the hearing, and especially during his testimony. I find his testimony to be believable and find him to be a sincere and credible witness, because he answered questions directly, completely, and honestly.

The record evidence supports approval of Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan, supra*, my careful consideration of the whole person factors<sup>75</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has mitigated or overcome the government's case. I conclude Applicant is eligible for access to classified information.

### **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:	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Paragraph 2. Guideline C:	FOR APPLICANT
Subparagraph 2.a.	For Applicant
Subparagraph 2.b.	For Applicant
Subparagraph 2.c.	For Applicant

### **DECISION**

On remand, in light of all the circumstances presented by the record in this case, I find again it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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<sup>75</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Christopher Graham  
Administrative Judge