



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



In the matter of:)
)
) ISCR Case No. 12-04375¹
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Spouse

12/23/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On August 1, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on August 25, 2013, and requested a hearing before an administrative judge. The case was assigned to another administrative judge

¹ The SOR case number is 14-04375. It is incorrect. The correct case number is noted above.

and reassigned to me on October 29, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 31, 2014. I convened the hearing as scheduled on November 17, 2014. The Government offered exhibits (GE) 1 through 3, and they were admitted into evidence without objection. Applicant and one witness testified. Applicant did not offer any exhibits.² DOHA received the hearing transcript (Tr.) on November 28, 2014.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Jordan. The request and the attached documents were not admitted into evidence, but were included in the record as HE III. Applicant did not object, and I have taken administrative notice of the facts contained in HE III. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all allegations in the SOR. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 45 years old. He was born in Jordan. He met his American wife, who was a missionary, in early 1998. They became engaged the same year, and she returned to the United States to prepare the paperwork for him to immigrate. He immigrated in November 1998, and they married shortly thereafter. Applicant became a naturalized citizen of the United States in 2005. Their two children were born in the United States. They are ages 13 and 9.³

Applicant earned a bachelor's degree in Jordan in 1991. After graduating he worked on his father's farm until 1994. He attempted to obtain a student visa from the United States so he could pursue a master's degree, but he was unable. He moved to Russia to earn the degree. He completed it in 1997 and returned to Jordan. His brother paid for his education, and he has no financial obligation to either country. He has never served in the Jordanian military. He has had no affiliation with the Jordanian government.⁴

Applicant worked at a grocery store from 1999 to 2000. He then worked in his field of study at a private company from 2001 to 2011. He has been working for a federal contractor since March 2011.⁵

² Hearing Exhibit (HE) I and II are Department Counsel's exhibits list and discovery letter, respectively.

³ Tr. 26, 31, 62.

⁴ Tr. 26-31.

⁵ Tr. 22, 62-64.

Applicant's parents are citizens and residents of Jordan. His father is 89 and his mother is 81 years old. His father is a retired school teacher and his mother is a homemaker. Teachers in Jordan are employed by the government. His father retired in 1978 and has had no other affiliation with the government. Applicant talks to his parents weekly because he is concerned about their health.⁶

Applicant has five brothers and four sisters. All except one sister and her husband are citizens and residents of Jordan. This sister has dual citizenship with Australia and Jordan. All of Applicant's siblings' spouses are citizens and residents of Jordan.

Brother A is a Colonel in the Jordanian Army serving on active duty. He is an instructor at an Army school. His wife is a pharmacist at a government hospital. They have three children. One child is living in the United States and attending school. Applicant's only contact with this brother and his family is when Applicant visits his parents in Jordan. His brother applied to immigrate to the United States about three or four years ago. Applicant testified it takes about eight to ten years for the immigration to be approved and it is pending. Applicant's sister-in-law has three brothers living in the United States who are citizens.⁷

Brother B is a retired Colonel in the Jordanian Army. He served about 22 years. He is an electronics technician at a hospital. His wife is homemaker. They have six adult children, none of whom work for the Jordanian government. Applicant's only contact with this brother and his family is when Applicant visits his parents in Jordan.⁸

Brother C is retired from the Jordanian water department. He was required to serve in the military for two years when he was young. He now performs odd jobs. His wife is a teacher at a private school. They have four children. None are affiliated with the Jordanian government. Applicant's only contact with this brother and family is when Applicant visits his parents in Jordan.⁹

Brother D works for a private bank in Jordan as a manager. He has had no affiliation with the Jordanian government or military. His wife is a homemaker, and they have two small children. She has three brothers, who are citizens and residents of the United States. Applicant communicates with this brother about every two weeks and sees him when he is visiting his parents. Applicant is sponsoring him and his family to immigrate to the United States. They started the process in 2008. When they are approved they will move to the United States.¹⁰

⁶ Tr. 23, 32-34.

⁷ Tr. 35-39, 79.

⁸ Tr. 39-40.

⁹ Tr. 41-42.

¹⁰ Tr. 43-45, 79-80.

Brother E is a doctor who works at a government hospital. His wife is a retired public school teacher. They have two grown children who are professionals. Applicant communicates with this brother about every two months. He sees him when he visits his parents.¹¹

Sister F is a retired public school teacher. She has no other affiliation with the Jordanian government. She is not married and lives with Applicant's parents. He talks to her weekly when he contacts his parents. Applicant is sponsoring her to immigrate to the United States.¹²

Sister G retired in 1995. She was a nurse who worked in a government hospital. After she retired she moved to Australia and has dual citizenship with Jordan. Her husband also has dual citizenship. They have two children, who were born in Australia and do not have dual citizenship. Applicant's sister was visiting Jordan at the same time he was there, so he visited with her.¹³

Sister H is a homemaker. She is widowed. Her husband was a public school teacher. They had no other affiliation with the Jordanian government. She has five adult children who work in the private sector. Applicant communicates with her every two to three months and sees her when he visits his parents in Jordan.¹⁴

Sister I is a retired public school secretary. Her husband worked in agriculture for the Jordanian government, but is now retired. They have three adult children who work in the private sector. Applicant communicates with her every two to three months and sees her when he visits his parents in Jordan.¹⁵

Applicant traveled to Jordan yearly from 2005 to 2011 and again in 2013 and 2014, to visit his parents. He will likely visit them again next summer unless they become ill and he would go sooner. His only purpose for visiting Jordan is to see his parents. Once his parents pass away he likely will not travel to Jordan; and if he does it may be once every 15 years because he hopes that some of his siblings will be living in the United States by then. When he is in Jordan visiting his family he does not contact any other people.¹⁶

Applicant's parents own a small piece of farm land in Jordan. He will likely inherit a portion of it when his parents pass away. The family's intention is that the land will be

¹¹ Tr. 46-47.

¹² Tr. 47-49.

¹³ Tr. 49-52.

¹⁴ Tr. 52-54.

¹⁵ Tr. 54-57.

¹⁶ Tr. 57-58.

sold and the proceeds will be distributed to Applicant's unmarried Sister F who takes care of their parents. This is her insurance policy because she does not have a husband to take care of her until she can immigrate to the United States. He estimated it was worth about \$30,000.¹⁷

Applicant has no assets in Jordan. He does not stay in contact with any friends. His only contact with Jordanian citizens is with his family. He sends his parents gifts, but does not support them or any other family member.¹⁸

Applicant and his wife own their home in the United States. It is paid and valued at approximately \$180,000. He has checking and savings accounts with his wife with approximately \$5,000 in them. He estimated their stock investments to be worth about \$160,000, 401K about \$38,000, and Individual Retirement Account about \$23,000. Their two vehicles are paid and worth about \$25,000.¹⁹

Applicant is registered to vote in his home state and has voted since becoming a citizen. He has never voted in a Jordanian election. He is a deacon in his church and serves on the mission committee. He has participated in humanitarian mission trips. He volunteers with the Red Cross. He helps with his children's activities. He does volunteer work around the church by using his talents to help his church and those less fortunate. Applicant's mother-in-law lives with them. Applicant's wife's family has a strong affiliation with the military as a consequence of her father and several siblings having served and retired from active service. Applicant expressed a strong allegiance to the United States and no other country.²⁰

Jordan

The Kingdom of Jordan is a constitutional monarchy. The U.S. Department of State's 2011 Human Rights Report lists Jordan's three most significant human rights problems as their citizens' inability to peaceably change their government; abuses committed with impunity by security forces; and restriction on freedom of expression and freedom of assembly. Other human rights problems were violence on women, arbitrary deprivation of life; torture or mistreatment; poor prison conditions, arbitrary arrest and denial of due process through administrative detention; prolonged detention and external interference with judicial decisions; infringement on citizens' privacy rights; and restrictions on freedom of speech and press.

Legal and societal discrimination against Jordanians of Palestinian origin remains widespread. Such persons are subject to arbitrary withdrawal of their citizenship without

¹⁷ Tr. 34-35, 58.

¹⁸ Tr. 59-62.

¹⁹ Tr. 64-69.

²⁰ Tr. 69-76

due process; exclusion from services such as access to public assistance, education and medical services; and exclusion from the political process.

The Government of Jordan considers dual Jordanian-American citizens to be Jordanian citizens. Jordanian authorities may not inform the U.S. embassy of arrests, detentions, or accidents involving dual Jordanian–American citizens. Jordanian law subjects dual citizens to certain obligations; for example, males under the age of 37 are required to register for service in the Jordanian military.

Under Jordanian law, any adult male may prevent a female or child relative from leaving the country by registering a hold on their travel with Jordanian authorities. This is possible even if the child or woman only holds U.S. citizenship. Jordanian authorities consider such disputes to be family matters and the U.S. embassy has a limited ability to intervene.

According to the United States State Department:

The United States deeply values its long history of cooperation and friendship with Jordan, with which it established diplomatic relations in 1949. The United States appreciates the special leadership role that Jordan plays in advancing peace and moderation in the region. The United States and Jordan share the mutual goals of a comprehensive, just, and lasting peace in the Middle East and an end to violent extremism that threatens the security of Jordan, the region, and the entire globe. The peace process and Jordan's opposition to terrorism parallel and indirectly assist wider U.S. interests. U.S. policy seeks to reinforce Jordan's commitment to peace, stability and moderation. In light of ongoing regional unrest, the United States has helped Jordan maintain its stability and prosperity through economic and military assistance and through close political cooperation. The United States encourages Jordanian efforts to continue to implement key political and economic reforms that will secure a better future for the Jordanian people.²¹

Policies

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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching

²¹ U.S. Department of State Background Note on Jordan, July 2014.

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (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.

AG ¶¶ 7(a) requires substantial evidence of a heightened risk. The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is 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."²²

Jordan is a country with significant human rights issues, including violence against women and the lack of fundamental freedoms. These issues raise heightened security concerns. However, Jordan also shares close ties with the United States with the mutual goal of advancing peace in the region.

Applicant has close ties with many family members in Jordan, who are citizens and residents. He maintains regular contact with his parents, siblings and their spouses, and visits them when he returns to Jordan, almost annually. I find Applicant's contact with these family members, who are citizens and residents of Jordan, create a heightened security concern under AG ¶ 7(a). I find Applicant's connection to them also creates a potential conflict of interest and AG ¶ 7(b) applies.

²² ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and the following are potentially applicable:

(a) the nature of the relationship 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 and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and

(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.

Applicant has regular and ongoing contact with his family members and their spouses in Jordan. He visits them and speaks to them by phone. He is sponsoring three of them to immigrate to the United States. AG ¶ 8(c) does not apply as his family contact is not casual or infrequent.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government, the country is known to conduct intelligence operations against the United States, or there is terrorist activity within the country.

Applicant has lived in the United States since 1998 and has been a citizen since 2005. He maintains significant contact with his family living in Jordan. He travels almost annually to visit them. Jordan and the United States work closely to advance peace and moderation in the region. They share mutual goals of a comprehensive, fair, and lasting peace in the Middle East, and an end to violent extremism that threatens the security of Jordan, the region, and the entire globe. The peace process and Jordan's opposition to terrorism parallel and indirectly assist wider U.S. interests. There is no evidence that the government of Jordan conducts intelligence operations against the United States or targets and exploits its citizens to gain intelligence. Excluding Applicant's Brothers A and B, his other relatives have minimal contact with the Jordanian government. Applicant's main focus is his elderly parents. Once they pass away he is unlikely to travel there with regularity. It is unlikely his parents or other family members would raise a concern and place Applicant in a position of having to choose between them and the interests of the United States. I find AG ¶ 8(a) applies to these family members.

Applicant also has strong family ties to the United States. His wife and two children are native born Americans. His mother-in-law lives with them. He has significant assets that are in the United States. He does not have assets in Jordan. If he inherits land from his parents, it will be sold and the proceeds given to his sister. He is involved with his church. He volunteers at school activities for his children and with other charities.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Two of Applicant's brothers have ties to the Jordanian military. Brother A has applied to immigrate to the United States. Brother B is retired from the military. Applicant's testimony was compelling and credible. I conclude he has such deep and longstanding relationships and loyalties in the U.S. that he can be expected to resolve any conflict of interest in favor of the U.S. interests. I find AG ¶ 8(b).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 45 years old. He has lived in the United States since 1998 and became a naturalized citizen in 2005. His wife and children were born in the United States. He has significant assets that are in the United States. As a devoted son he

maintains regular contact with his elderly parents in Jordan. Once they pass away he expects his contacts in Jordan to be significantly reduced. Most of his family members do not have contact with the Jordanian government. It is unlikely the Jordanian government would target his relatives for intelligence. Applicant convinced me that any conflict of interest that might arise regarding his two brothers with military service would be resolved in favor of the United States. Although he has extended family in Jordan, his closest ties are his immediate family in the United States. Applicant's foreign contacts are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the foreign influence guideline.

Formal Findings

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

Conclusion

In light of all of the circumstances it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge