



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00511

Appearances

For Government: David Hayes, Esq., Department Counsel

For Applicant: *Pro se*

02/20/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On June 4, 2013, 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.

In a letter dated June 18, 2013, Applicant addressed the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 1, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 27, 2013, setting the hearing for September 11, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1-3. They were

accepted without objection. Applicant offered testimony, introduced two witnesses, and submitted three files of materials, which were accepted as Applicant's Exhibits (AX) A1-7, B1-2, and C1-3 without objection. Applicant was given a week to submit any additional materials. On September 16, 2013, the Government forwarded seven files of information from Applicant. They were accepted into the record as AX D-J without objection. The transcript of the proceeding (Tr.) was received on September 19, 2013, and the record was closed.

Request for Administrative Notice

Department Counsel's Request for Administrative Notice regarding certain facts about the kingdom of Jordan and Gaza was accepted into the record as Hearing Exhibits (HE) 1-2 without objection. After the hearing, Applicant submitted supplemental information regarding these locales in AX D-J, which were accepted without objection and incorporated herein. Administrative notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from Government reports. See Stein, ADMINISTRATIVE LAW, § 25.01 (Bender & Co. 2006).

JORDAN

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy with a robust economy and modern infrastructure. Western culture features prominently in the lives of many Jordanians. At the same time, traditional Islamic ideals and beliefs provide a conservative foundation for the country's customs, laws, and practices. Relations between the United States and Jordan have been close for six decades, with Jordan's strong opposition to terrorism and commitment to peace and stability indirectly assisting wider U.S. interests. Despite the se significant ties, the U.S. State Department warns that the threat of terrorism remains high in Jordan. Transnational and indigenous terrorist groups have demonstrated the capability to plan and implement attacks in Jordan.

Following the death of Osama bin Laden in May 2011, the State Department issued a worldwide Travel Alert to all U.S. citizens traveling or residing overseas regarding the possibility of enhanced anti-American violence. Travelers to Jordan should be cognizant of the fact that Al-Qaida in Iraq affiliates has carried out terrorist activities against both the U.S. and Jordanian targets in Jordan.

GAZA

Following the mobilization of forces along Israel's border and the outbreak of the 1967 Six-Day War between a number of Arab states and Israel, Israel seized the West Bank, Gaza Strip, and East Jerusalem. Israel's occupation of the West Bank and Gaza Strip remains to the present day. In 1994, the Palestinian Authority (PA) was given limited self-rule over the West Bank and Gaza Strip, subject to supervening Israeli

control. In 2007, Hamas, a designated Foreign Terrorist Organization (FTO), took over the Gaza Strip and has exercised *de facto* control over the territory to the present day. The Fatah-led PA exercises limited civil and administrative control over the West Bank. However, the division of responsibilities and jurisdictions between the PA and Israel in the West Bank is complex and subject to change. On November 29, 2012, the United Nations voted to “accord to Palestine non-member observer State status.” The U.S. is concerned that this unilateral move by the Palestinians may further impede already stalled negotiations over a two-state solution.

The State Department urges U.S. citizens to exercise caution when traveling to the West Bank. Several groups operating in Israel, the West Bank, and Gaza have been designated as FTO, such as Hamas. The threat posed by terrorist groups operating in the occupied territories, including the West Bank, is significant. Foreigners, including U.S. citizens, have been kidnapped and killed in the past. Many of these groups are openly hostile to the United States and U.S. interest. Furthermore, travel to and out of the West Bank by U.S. citizens of Palestinian, Arab, or Middle Eastern descent may result in detention and prolonged questioning, without being provided consular access. In addition, the State Department reports serious human rights problems throughout the occupied territories, to include arbitrary arrest and torture, often with impunity; some of which was reportedly committed by PA security forces on detainees. Corruption and poverty remain significant problems in the region

Findings of Fact

Applicant is a 36-year-old engineer who was granted a fellowship at a United States agency in 2012. He was born in the Gaza Strip in the late 1970s. Several months later, he was moved by his parents to the United Arab Emirates, where he was raised. He came to the United States in 1995 at age 18. He did so to both fulfill a childhood dream and undertake post-secondary studies. (Tr. 58) In 1998, during his studies, he met his future wife, a naturalized U.S. citizen originally from India. The couple married in 2001. Applicant’s wife is presently employed by a U.S. defense contractor. Applicant received a bachelor’s degree from a U.S. college in 2000, a master’s degree in 2004, and a doctorate in 2010. Between the time he was studying for his master’s degree until he accepted his present fellowship, Applicant held a number of jobs.

Applicant became a U.S. citizen when he first became eligible to do so in 2006. He has no foreign bank accounts, investments, or assets. He and his wife own a home worth about \$350,000. They are preparing to purchase a second home. They actively vote in national and local elections in the United States. Applicant maintains two checking accounts, a savings account, stocks, mutual funds, and retirement accounts in the United States, amounting to over \$300,000. (Tr. 73-74). He and his wife jointly earn about \$150,000 a year. Socially, Applicant and his family interact exclusively with fellow Americans they know from their work and community. (Tr. 22-23, 39-40) Applicant enjoys building projects and spending time with his family, which includes a number of outdoor activities with his two children. Like his wife and sons, Applicant is “Americanized,” “fully ensconced within everything American.” (Tr. 12, 39). He maintains

no organizational or social ties with the Middle East except those related to his parents and siblings. Since coming here in the 1990s as a teen, he has only visited Gaza once, in 2001. He has no plans to return. His loyalties are exclusively with the United States. (Tr. 80)

After becoming a United States citizen in 2006, Applicant sponsored his parents to join him in the United States. His father worked in the United Arab Emirates as a teacher at a private high school, while his mother was a homemaker. Neither has ties to a foreign government or military. Applicant's parents retain legal residency in Gaza solely because their younger children in Gaza are minors, need their parents as their legal caregivers, and have not yet been granted visas to immigrate to the United States. Otherwise, Applicant's parents maintain U.S. residency, both out of a desire to live here and to help them meet the requisites for seeking U.S. citizenship once they are eligible to apply for naturalization. (Tr. 62) When in the United States, they live with Applicant, who also helps provide them with some financial support when they are here. (Tr. 38) When in Gaza, they stay at a house Applicant believes his father shares in ownership with members of the father's family. Applicant believes that his two youngest siblings stay there, but he is unsure of his siblings' living arrangements. (Tr. 60-61) Applicant and his parents hope that Applicant's siblings will immigrate to the United States as their visa applications are approved.

With regard to his siblings in Gaza, Applicant has one older brother, three younger brothers, and six younger sisters. At least two siblings are minors. His siblings lead low profile lives. Applicant maintains minimal contact with them, sharing about one telephonic conversation with them per year, if any. (Tr. 38) He has not seen any of them since his sole visit back to the Middle East in 2001. He has not spoken with some siblings since 2002, when he spoke to most of his siblings for one or two minutes each to solicit information he needed to complete a security clearance application (ie., birthdates, children, etc). (Tr. 68) Only one sibling, his older brother, has ever visited the United States. (Tr. 26-27, 36-37) He does not know any of his siblings' birthdays, and relies on his parents for details concerning his various siblings. (Tr. 28)

Applicant believes his elder brother works for an American school and his younger brothers are similarly working in education or are students. (Tr. 63) He believes his sisters are all homemakers, married to men who own shops in the local market. (Tr. 64) He is not aware of any of them having a connection with a foreign government or military. (Tr. 65) He has little in common with his siblings, who now range in age from about 15 to 40. Applicant left the family nearly two decades ago, before the youngest siblings were born. He has minimal contact with his siblings, and his concentration is on his wife, children, profession, and life in the United States. (Tr. 69-71) Applicant's wife described Applicant's relationship with his siblings as "distant." (Tr. 38) To Applicant, his "family" consists of his wife and sons, "as opposed to the broader picture [to include his] parents and siblings." (Tr. 70)

Along with sponsoring his parents through the immigration process, Applicant is currently sponsoring his three youngest siblings for visas. (Tr. 40) Unlike his parents,

who are given priority in terms of visas due to their age, siblings have to “wait in the queue, and that could take five years, it could take seven years.” (Tr. 41). Therefore, it is unclear when or if these siblings will be able to immigrate to the United States. He understands that it may not be possible for any or all of his siblings to immigrate to the United States due to quotas. All of Applicant’s siblings wish to immigrate to the United States. (Tr. 43, 62)

Applicant’s parents know that he has had a background investigation, but they do not know the purpose for the investigation or any details about his work. His work with a U.S. governmental agency takes him to a variety of places, ranging from “the most dangerous places [to . . .] the best places.” (Tr. 82) His job and personal circumstances “don’t attract any attention of foreign . . . intelligence,” he maintains a “low profile,” and he has no interest in using social media outlets. (Tr. 30) He has no plans to accept assignments in the West Bank or Gaza. (Tr. 83) His siblings know nothing of his work. Of his job, Applicant notes that he has unique talents being used by his present employer that come to him through both his personal and educational experience, as well as his linguistic skills. (See, e.g., Tr. 48) He is known at his job for having “outstanding character” and being an exceptional, reliable employee. (Tr. 51; see also Exs. A1-7 and B1-2). He is a highly-valued asset to his agency.

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 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. 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

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

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.

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

AG ¶ 7(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;

AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing the information; and

AG ¶ 7(d) sharing 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.

Here, Applicant's parents maintain citizenship in Jordan. His parents split their residency between Gaza and living with Applicant in the United States, while his siblings live solely in Gaza. The issue of control over Gaza is complex. It's presently under the *de facto* control of Hamas, a FTO. Consequently, the above-referenced disqualifying conditions apply. Furthermore, special consideration must be given in this case due to the heightened risk caused by the risk of terrorism associated with Hamas.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

AG ¶ 8(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, or government and the interests of the U.S.,

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and 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

Applicant has the burden to demonstrate evidence sufficient to refute or mitigate the allegations and he has produced sufficient mitigating evidence.

Here, the primary concern is Applicant's relationships with his parents and siblings. Applicant's parents are aggressively going through the immigration process to become United States citizens. They spend at least half their time in the United States with Applicant. They possess but a partial interest in a house in Gaza, which appears to be otherwise owned by Applicant's father's family. That interest does not appear to be essential or an immediately liquid asset, but rather a place for them and their youngest children to live while awaiting immigration status into the United States. None of Applicant's extended family are associated with any government, military, or terrorist groups, and there is no evidence any of them are involved with the internal tensions currently at play in the Gaza and West Bank region.

While Applicant wishes his siblings well, and is doing what he can to help initiate the process for them to immigrate to the United States, their blood ties do not signify close or intimate bonds. His immigration to the United States nearly two decades ago, his minimal contact with his siblings, and the broad age range of his siblings (approximately 15 to 40) have minimized their familial bonds greatly. In addition,

Applicant fully appreciates and accepts that his siblings may never become United States citizens due to quotas and other factors outside their control.

Meanwhile, Applicant intentionally removed himself from his Middle Eastern roots and immigrated to the United States at age 18. He has spent the balance of his life here and has embraced his new home. He earned a bachelor's, master's, and doctoral degrees here. He met his wife, married, and had two children in the United States. Applicant owns one home, is considering a buying a second home, votes, pays taxes, banks, invests, works, and has built both his social and professional lives here. He is completely "Americanized." Other than family, he has no fixed and significant nexus to the Middle East. It is clear that Applicant's primary concerns are with regard to his wife, children, work, and the milieu in which he has thrived for nearly 20 years as a United States resident and citizen. While the presence of terrorism in Gaza is a very genuine concern, it is notable that there is scant information indicating that either Jordan or Gaza manipulates its people in order to target United States citizens or sensitive information. It is equally notable that Applicant's allegiances are clearly with the United States, his wife and children, and the stability of their life in the United States. In light of these considerations, I find that the aforementioned mitigating conditions apply.

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). 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 the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 36-year-old engineer who was granted his present fellowship by a U.S. agency in 2012. Born in Gaza and raised in the United Arab Emirates, he immigrated to the United States nearly 20 years ago. Since settling in the United States, he has earned bachelor, masters, and doctoral degrees, met his future wife, become a United States citizen, married, bought a home, had two children, started a career, saved a considerable amount of money, and, as he proudly notes, achieved the American Dream. He has only been to Gaza once since becoming a U.S. citizen. In the United States, he works, invests, votes, and builds toward a comfortable future. He maintains no tangible assets abroad. He has opened his home to his parents as they seek U.S. citizenship, and he is willing to sponsor his siblings toward their goal of immigrating to the United States. His highly credible testimony clearly indicates, however, that he

maintains only a negligible relationship with his siblings, with whom he maintains infrequent contact and of whom he knows very little.

There is no question that terrorism is a concern with Gaza, mainly from the influence of Hamas. Hamas, however, does not appear interested in the day-to-day activities of the average Gaza resident. There is no reason to suspect Applicant's family abroad is of particular interest to Hamas or a foreign government, or that there is any particular interest, now or in the future, in Applicant. Applicant enjoys living a simple, low-key life. It is highly unlikely that any of Applicant's kin could be used as a tool of coercion against him. Therefore, I conclude Applicant has mitigated security concerns arising under Guideline B.

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
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Subparagraphs 1.a-1.b:	For Applicant
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Conclusion

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

Arthur E. Marshall, Jr.
Administrative Judge