



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



In the matter of: )  
 )  
----- ) ISCR Case No. 13-01073  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

04/29/2014

**Decision**

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

Applicant mitigated security concerns regarding his family members, who are citizens, residents, or citizen-residents of Jordan and Kuwait. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On November 6, 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 notarized December 4, 2013, Applicant admitted six of seven allegations and requested a hearing. I was assigned the case on February 20, 2014. On February 28, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for April 16, 2014. The hearing was convened as scheduled.

The Government offered five documents, which were accepted into the record without objection as exhibits (Exs.) 1-5. The Government also offered two packets of material concerning Jordan and Kuwait, which were similarly accepted without objection as hearing exhibits (HE) 1-2. Applicant gave testimony and offered 26 documents, which were accepted into the record as Exs. A-X without objection. The transcript (Tr.) of the proceeding was received on April 24, 2014. The record was then closed. Based on a through review of the case file, I find that Applicant carried his burden in mitigating security concerns arising under Guideline B. Consequently, eligibility for a security clearance is granted.

### **Request for Administrative Notice**

Department Counsel submitted Requests for Administrative Notice regarding certain facts about the nations of Jordan and Kuwait. Administrative or official 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, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to these nations were derived from the offered request and its attachments; other facts are derived by similar Government publications introduced in other DOHA cases and commonly known.

The facts thus derived regarding **Jordan** are as follows: 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 these 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 Department of State 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 U.S. and Jordanian targets in Jordan. Human rights abuses have been known to occur in Jordan.

The facts relevant to **Kuwait** include the following: Kuwait is a small, oil-rich constitutional, hereditary emirate ruled by princes. Its constitution provides for an elected National Assembly and details the powers of the branches of government and the rights of citizens. The Department of State remains concerned about the possibility of terrorist actions against U.S. citizens and interests abroad, specifically in the Middle East, including

the Persian Gulf and Arabian Peninsula. The Near East region remains one of the most active in terms of terrorist activity. The threat of terrorism exists in Kuwait. Kuwait lacks legal provisions that deal specifically with terrorism and terrorist financing. As a result of Kuwait's lack of a clear legal framework for specifically prosecuting terrorism-related crimes, it often resorts to other legal statutes to try suspected terrorists, which has the potential of hampering enforcement efforts. In addition, Kuwait has a record of human rights abuses, including disparate treatment of women.

Strategic cooperation between the United States and Kuwait increased in 1987 with the implementation of a maritime protection regime that ensured the freedom of navigation through the Gulf. The U.S.–Kuwait strategic partnership intensified dramatically after Iraq's invasion of Kuwait and the U.S.–Kuwait relationship remains strong in the post-Gulf War period. Kuwait is an important partner in the U.S. counterterrorism efforts.

### **Findings of Fact**

Applicant is a 34-year-old senior personnel transition coordinator who has worked in his present position for three years. He was born in Kuwait, but became a Jordanian citizen due to his parents' citizenship. Applicant immigrated to the United States in 2000 and became a naturalized United States citizen in 2006. He became quickly acclimated to the United States. He has earned an associate's degree in international studies and a bachelor's degree in general studies. Applicant has been continuously employed since 2011, following completion of his collegiate studies. His allegiance is solely to the United States. Applicant admitted all allegations concerning foreign relatives but one. He noted that the allegation at SOR ¶ 1.e is erroneous because he does not have a sister-in-law who is a citizen and resident of Kuwait.

Applicant's present job takes him abroad regularly. His annual salary is about \$80,000, which is more than sufficient to meet his needs. He maintains good credit, having achieved a credit score of 795. In addition to his regular job, Applicant performs volunteer work at a U.S. embassy when he is abroad. Applicant travels on a United States passport; he does not have a foreign passport. He owns no real property abroad. His financial holdings are solely in the United States. Applicant pays United States taxes. He votes in U.S. elections.

Despite his extensive travel, Applicant has never been approached by any individuals curious about his work. He files complete and appropriate documentation with his employer regarding all travel. Due to the nature of his position, he has worked with numerous high-ranking individuals, many of whom wrote recommendations on his behalf. In full knowledge of Applicant's nexus to relatives in Jordan and Kuwait, they wrote "glowing" recommendations concerning Applicant. Tr. 36-37; Exs. D-M, R-Y. Applicant works long hours, six days a week. He has little spare time to spend with family. In addition, he has made a conscious decision to limit his contact with his foreign family members due to the nature of his work. Tr. 39-40. Cooling relations has not been difficult for Applicant, who noted it was a small sacrifice compared to losing his career. Tr. 44.

At issue in the SOR are several relatives, including:

1.a - Applicant's mother, a U.S.-Jordanian dual citizen. Her primary residence is in the United States. She and Applicant visit about once a year and they speak by telephone about every month.

1.b – Two brothers, citizens and residents of Jordan. Applicant has not seen his brothers in at least three years. They maintain telephonic contact about every month.

1.c – One sister, a citizen and resident of Kuwait who holds a government service position. Applicant sees her a few times a year, about every two or three months at the most.

1.d – One brother-in-law, a citizen and resident of Kuwait. This in-law is retired from the private sector and married to the sister noted above. Applicant sees him a few times a year.

1.e – Applicant credibly denies having a sister-in-law who is a citizen and resident of Kuwait. It appears this allegation may be based on a niece, who is a citizen and resident of Kuwait, discussed below. Tr. 45-46.

1.f – One niece, who is a citizen and resident of Kuwait and is a scientist working for the Kuwaiti government. She is the daughter of the sister and brother-in-law noted above. The three live together in the same house. Applicant similarly sees her a few times a year.

1.g – One friend and associate who is a citizen and resident of Kuwait, and who is a Kuwaiti government employee. Applicant knows this individual through his work. They met about two years ago. Their contact is professional.

## **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.

Applicant’s mother is a dual U.S.-Jordanian citizen primarily residing in the United States. His two brothers, sister, brother-in-law, niece, and a professional

associate are citizens and residents of Kuwait. I find that the following disqualifying conditions arise under AG ¶ 7:

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) connection 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.

In finding these conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. Terrorist activities have transpired within Jordan and Kuwait. These facts are sufficient to find a heightened risk exists in this case. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an Applicant may be subject to coercion or undue influence when a third party pressures or threatens an Applicant's family members. Under these facts, a third party coercion concern potentially exists. Therefore, the evidence provided is sufficient to raise the above disqualifying conditions.

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

AG ¶ 8(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority.

AG ¶ 8(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Applicant has the burden to demonstrate evidence sufficient to refute or mitigate the allegations.

Here, the primary concern is Applicant's relationships with his mother, brothers, sister, and her family. Applicant explained that his mother is primarily a U.S. resident, despite dual U.S.-Jordanian citizenship. Otherwise, he has purposefully reduced his contact with family members abroad due to his work. Even without such measures, his hectic work schedule, travel, and job commitment have resulted in there being minimal contact between Applicant and his relatives. While his sister and niece work for a foreign government, that government is a strong partner with the United States in the war against terror. Moreover, their jobs bear no apparent nexus to information gathering, police enforcement, or the monitoring of terrorist groups.

Applicant came to the United States on his own initiative. Once here, he pursued and completed post-secondary studies and attained college degrees. Since that time, he has been continuously employed. He became a naturalized U.S. citizen. He travels only on a U.S. passport, votes only in U.S. elections, and pays U.S. taxes. He maintains excellent credit. His assets are solely in the United States. He considers the United States to be his home. Applicant routinely reports to his employers regarding his foreign contacts and travel. The one non-family member noted in the SOR is a friendship with a work associate who is connected to the Kuwaiti government. Given these factors, I find that AG ¶ 8(a)-(b) and 8(d)-(e) 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 three guidelines at issue in my whole-person analysis. Most of the factors in AG ¶ 2(a) were addressed under the above guideline, but some warrant additional comment.

Applicant is a 34-year-old human resource professional who has worked in the defense contracting area since 2011. A naturalized U.S. citizen, Applicant received his post-secondary education in the United States and has built both a life and career in this country. He uses a U.S. passport. He votes, files taxes, and maintains his assets in the

U.S. Exceptionally industrious and highly regarded in his field, Applicant minimized already cool relations with his foreign relatives when he learned contact with them could jeopardize his work. Applicant has clearly put his career and his personal life ahead of any familial obligations with those family members he left behind in Kuwait. Given the countries at issue and given the facts in this case, it seems very unlikely that Applicant would ever resolve any conflicts between his relationships and his loyalties to the United States in favor of his foreign family members.

When disqualifying conditions are raised, the burden is then placed on an Applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant has presented sufficient information about himself, his family, and the countries at issue to mitigate foreign influence security concerns.

### **Formal Findings**

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

|                           |               |
|---------------------------|---------------|
| Paragraph 1, Guideline B: | FOR APPLICANT |
| Subparagraphs 1.a-1.g:    | For Applicant |

### **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.

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Arthur E. Marshall, Jr.  
Administrative Judge