



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



In the matter of:)
)
) ISCR Case No. 13-01179
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

07/08/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On December 23, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the basis for its preliminary decision to deny her application for a security clearance, citing security concerns under Guideline C (Foreign Preference), and 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) implemented in September 2006.

Applicant timely answered the SOR and elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on April 8, 2014.¹ The FORM was mailed to Applicant, and she received it on April 29, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide

¹The Government submitted seven items in support of its case.

additional documentation. The case was assigned to me on June 30, 2014. Eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Jordan. The request and the attached documents are included in the record file. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations under the two guidelines. Her admissions are incorporated in my findings of fact. I make the following findings:

Foreign Influence

Applicant is a 25-year-old woman who was born in Jordan. Applicant became a naturalized American citizen on January 1, 2001. She lived with her parents in Jordan from January 2002 until July 2004. (Item 5) Applicant moved to the United States permanently in August 2004. She received an undergraduate degree in May 2010, from an American university. She is single, never married. She is a dual citizen of Jordan and the United States.

Applicant has worked as a research assistant with an American university for several years. Since September 2010 she has been employed by a defense contractor. (Item 5)

Applicant has family members who are citizens and residents of Jordan. Her father, who is a dentist, is a citizen and resident of Jordan. Her mother, who is unemployed, is a citizen of Jordan and the United States, residing in Jordan. Applicant speaks to her parents daily by phone. She also texts and uses Skype to maintain contact with them. Applicant's parents do not have any affiliation with the Jordanian government. (GX 6) However, her parents are aware that Applicant is under consideration for a security clearance.

Applicant's grandmother (80) is a citizen and resident of Jordan. She has some contact with her grandmother by phone. She does not have extensive conversations with her due to her grandmother's hearing difficulty. (GX 4) Applicant sees her grandmother when she visits Jordan. Her grandmother worked in her home and also had a music shop. She has no affiliation with the Jordanian government. (GX 6)

Applicant has two aunts who are citizens and residents of Jordan. She has two uncles who are citizens and residents of Jordan. There is no other information in the record concerning them. Applicant also has an aunt and uncle who are dual citizens of the United States and Jordan.

Applicant has a childhood friend, who is a citizen of Jordan and Canada, who resides in Jordan. She has weekly contact with her by phone or email. She sees her when she visits Jordan.

Applicant's brother is a citizen of Jordan and the United States. He received his American citizenship due to his mother's naturalized status. He currently lives in the United States with Applicant.

Applicant has provided significant expertise, language capabilities, and cultural understanding in a contractor-site based capacity. She is lauded for her knowledge and language skills. (Item 4)

Applicant understands the impact that her close family ties with her family members has on her access to classified information. She states that her connection to Jordan does not reflect any disloyalty to the United States. No one in her family is connected to the Jordanian government or the military. (Item 4)

Foreign Preference

Applicant admits that since becoming a United States citizen in 2001, she has renewed her Jordanian passport in June 2009, with an expiration date of June 2014, She again renewed her Jordanian passport in August 2013, with an expiration date of August 2018. (Item 4)

Applicant maintains her Jordanian passport for travel to Jordan.² During the summers of 2006-2010, she used her Jordanian passport to spend summer holidays from college in Jordan. The visits were usually two months in length. She chose not to use her American passport because she would also have to pay for a visa, which only lasts 25 days. According to Applicant, retention of a Jordanian passport is a matter of convenience. She also desires to keep the Jordanian passport due to her parents living in Jordan. She is the eldest child and wants the capability to immediately travel, if an emergency would arise.

Applicant acknowledged that she could travel to Jordan using her American passport, but states the Middle East is a "region suffering politically with instability, with weak rules of law" and decided not to surrender her Jordanian passport. Initially, she stated that she was willing to renounce and surrender her foreign passport, but it appears that she has changed her mind. Her American passport is valid and does not expire until September 2016.

Administrative Notice

I take administrative notice of the following facts about Jordan.

²Applicant also used her Jordanian passport to visit Lebanon in June 2008. (Item 6)

As set forth in AG ¶ 6 of Guideline B, the identity of the country should be considered along with other considerations such as whether the country is known to target U.S. citizens to obtain protected information or is associated with terrorism. Jordan is a constitutional monarchy ruled by a king, with the assistance of a Council of Ministers selected by the king, and a bicameral National Assembly. The country has followed a pro-western policy of close relations with the United States for at least six decades, and is a strategic partner in the war on terror.

On the other hand, continuing human rights problems persist within the country, including arbitrary arrests, denial of due process through administrative detention, prosecutorial interference with judicial decisions and privacy rights, and restrictions on freedom of speech.

The threat of terrorism is high in Jordan. Terrorist groups inside Jordan and terrorists with international connections have targeted U.S. Government officials, private citizens, as well as other foreign nationals. Terrorist organizations have targeted the United States for intelligence information through various nefarious means.

The government of Jordan considers U.S.-Jordanian dual nationals to be Jordanian citizens. Jordanian authorities may not inform the U.S. embassy of arrests, detentions or accidents involving dual 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 Jordan by registering a hold on their travel with Jordanian authorities. This is possible even if the child or woman holds only U.S. nationality. Jordanian authorities view travel holds as private family matters, and the embassy is limited in its ability to intervene.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify an applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to an applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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(a). A disqualifying condition also may be raised by “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(b)

Applicant has strong family ties, contacts, and connections in Jordan by her own admission. Applicant’s parents reside in Jordan. She has extended family members who are citizens and residents of Jordan. Applicant’s close relationship to her family, especially her parents, may place her in a position of having to choose between the interests of foreign individuals and the interests of the United States. Applicant maintains that she has no allegiance to Jordan, and she would renounce her citizenship to Jordan and surrender her foreign passport. However, she has apparently changed her mind. This could create a potential conflict of interest between her security obligations and her desire to help them. She travels to see family in Jordan often. Applicant has maintained regular contact with them; however, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to her family members in Jordan. Based on this evidence, AG ¶¶ 7(a) and (b) are raised.

Since the Government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and, (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, 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 government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Security concerns under this guideline can be mitigated by showing that "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." AG ¶ 8(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, security concerns can be mitigated under AG 8(b) when "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 interest in favor of the U.S. interest."

The mere possession of family ties with a family member living in Jordan, is not, in itself, disqualifying under Guideline B. However, if an Applicant has a close relationship with even one relative, living in a foreign country that is a country of concern, this factor is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant freely admits regular and continuing contact with her family in Jordan. The country of Jordan must be considered in the evaluation. AG ¶ 8(a) is not established.

Granted, Applicant wants to help the United States. There is nothing about the nature of Applicant's relationships with her family members in Jordan or the positions or activities of those persons that mitigates the Government's security concerns. Applicant has not presented sufficient information to mitigate her high burden in this case.

Applicant spoke about her undivided loyalty to the United States. Based on the facts in this case, it is not clear that she can be expected to resolve any conflict of interest in favor of the U.S. interest. There is insufficient record information to support the application of AG ¶ 8(b) or ¶ 8(c).

Foreign Preference

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.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to (1) possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant renewed her foreign passport in 2009 and again in 2013, after the security clearance investigation was initiated in 2012. Her foreign passport is valid through August 2018. She has used her Jordanian passport in lieu of her U.S. passport on more than one occasion for the sake of convenience. Applicant clearly intends to maintain her Jordanian passport so that she may immediately travel to Jordan or the Middle East, if necessary, to aid her parents. She also uses this passport to forgo obtaining a visa, which imposes time restrictions on the visit.

As to traveling to Jordan, and not using her valid U.S. passport, there is no mitigation. Applicant used the Jordanian passport because of convenience. She has not mitigated the security concerns under foreign preference.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. An 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.

The Appeal Board permits the whole-person analysis under Guideline B to address other matters, such as a wide variety of “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family ties to the U.S. relative to his or her 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.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Certain circumstances weigh against Applicant in the whole-person analysis. First, her parents and extended family are residents of Jordan. She is in close contact with them. She travels frequently to visit them. Terrorists could attempt to use Applicant’s family to obtain information. These connections raise the possibility of foreign influence.

A Guideline B decision concerning Jordan must take into consideration the geopolitical situation and dangers there. Jordan is a dangerous place because of the violence from terrorists. The terrorists continue to threaten the Government, the interests of the United States, and those who cooperate with and assist the United States. The United States and Jordan are allies in the war on terrorism.

A Guideline C decision concerns the exercise of any right or privilege for a foreign country over the United States. Applicant had a valid Jordanian passport, which she has used on several occasions even though she has a U.S. passport. She has recently renewed her Jordanian passport. She has decided to keep the Jordanian passport for convenience. She has not mitigated the allegations under the foreign preference concern.

Despite the fact that she is a naturalized U.S. citizen since 2001, I have doubts about Applicant having access to classified information. There is no evidence that she has ever taken any action that could cause potential harm to the United States. Her employer praises her work. Applicant claims loyalty to the United States, but that is not the issue.

The Appeal Board has held that “generally, an applicant’s statements, by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to little weight.”

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has not mitigated the security concerns foreign influence and foreign preference security concerns.

Formal Findings

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

Paragraph 1, Foreign Influence:	AGAINST APPLICANT
Subparagraphs 1.a- 1.g:	Against Applicant

Paragraph 2, Foreign Preference: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge