

DATE: August 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07412

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esquire, Department Counsel

FOR APPLICANT

Larry E. Becker, Esquire

SYNOPSIS

Applicant mitigated security concerns over foreign influence. While his parents and siblings are citizens of and live in Jordan, they have no ties to the government which is an ally of the United States (U.S.). His parents have been granted permanent resident status in the U.S. in January 2000, but remain part of the time in Jordan as the minor daughters' permanent resident status is still pending. I conclude that it is unlikely that they are in a position to be pressured. Further, there is no evidence that Applicant would succumb to foreign influence if his family should be subject to duress. His reference attests to his good character and professionalism at work. Given his history of responsible conduct in the U.S., I think it unlikely that foreign pressure on his family could create a situation that could result in the compromise of classified information. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 28, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on March 17, 2003, and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on April 17, 2003. The case was assigned to Administrative Judge Matthew alone that day. Subsequently, on May 8, 2003, the case was reassigned to me for caseload reasons. After a mutually convenient date for hearing was agreed to with Applicant's counsel, a Notice of Hearing issued on May 15, 2003, set the matter for May 28, 2003. At the hearing the Government offered one exhibit for Official Notice (Exhibits I) and offered three exhibits (Exhibits 1-3). All were admitted into evidence. (TR 18-22) Applicant testified, called one witness, and offered one exhibit for Official Notice (Exhibit II) and thirteen exhibits (Exhibits A through M) which were admitted into evidence. (TR 22-29) The transcript (TR) was received on June 5, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 33-year-old employee, began working as a consultant for a defense contractor (Employer #1) in March 2000 to present; earlier he had worked for Employer #2 from April 1999 to March 2000. In May 2000 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for the position. He has not worked on any classified projects yet, but some of the projects he worked on were subsequently classified. (Exhibits 1, 2, 3; TR 32-38; 41-48)

Born in Syria in 1970, Applicant lived there for 18 years and moved to Jordan in the late 1980's and lived there for four years. He was a citizen of Jordan who received an Associate of Arts degree at a university in Jordan in 1991. He first came to the United States (U.S.) in 1984 to visit an uncle who was a U.S. citizen. Applicant returned in February 1993 with a visitor visa with his uncle as his sponsor. He began to study at a U.S. university from January 1996 and received a Bachelor's degree in May 1999. He is also studying for a master's degree at a U.S. university. (Exhibits 1, 2, 3, K, L; TR 64; 67-70; 73-79, 87-88)

Applicant visited Jordan in May 1994 to visit his family for one week, in December 1996 to visit his family for two weeks, and again in September 1998; he also visited Syria in September 1998 to visit his family and to attend a wedding for one week. For this travel he used a passport issued by Jordan which was in effect from November 1996 to November 2001; since it expired, he has not renewed it and does not intend to do so. He considers not renewing the passport a step to renouncing his citizenship in Jordan. After he returned from his visit to Jordan and Syria, he became a naturalized U.S. citizen in September 1998 and got a U.S. passport in September 1998. In March 2000 he married a U.S. citizen, and they live in the U.S. (Exhibits 1, 2, 3; TR 70-72; 93)

Foreign Influence

Applicant has a mother born in Syria and a father born in Israel who are citizens of Jordan. His father was upper middle class and owned several businesses which he subsequently closed. He is now retired. The businesses his father owned were a limousine service, a restaurant, and retail stores. After Applicant became a U.S. citizen, he applied for his parents to become citizens. His parents received green visitors cards in January 2000 and are Permanent Resident Card holders who divide their time between living in Jordan and the U.S. as they have three young daughters ages 11, 11, and 17 who live in Jordan. The parents have U.S. Social Security cards. When his parents come to the U.S. they stay with Applicant. (Exhibits 1, 2, 3, A, B, C; TR 22-23, 49-55, 57; 72; 93-97)

Applicant has three brothers who were born in Syria but who now live in and are citizens of Jordan:

- Brother #1 born in 1968 is a structural engineer who has been with the same private company for 12 years. He is married and has five children. Applicant contacts him two to three times yearly by phone.
- Brother #2 born in 1974 is a computer engineer who is self-employed but does not work for the government. Applicant has little or no contact with him.
- Brother #3 born in 1976 owns a small automotive store and has never worked for the government of Jordan. Applicant has little contact with him.

(Exhibits 1, 2, 3; TR 56-61; 97-98)

Applicant has three sisters who live in Jordan: Sister #1 born in Syria in 1984 is a citizen of Jordan. Sister #2 born in Jordan in 1992 is a citizen of Jordan, and Sister #3 born in Jordan in 1992 is a citizen of Jordan. His mother made application for U.S. Green cards for his sisters to become permanent residents in July 2000. Given the immigration backlog, Applicant is hopeful that his sisters will be allowed to immigrate to the U.S. in one more year's time by July 2004. He has little contact with his sisters. (Exhibits 1, 2, 3; Exhibits D, E, F, G, H, I; TR 50-54, 98-99)

To study at a U.S. university, Applicant received financial aid for tuition worth \$80,000 from a princess from Saudi Arabia. However, the check was sent directly to the university. He never met her, but he would report his grades to the embassy. He had no other obligation to the princess or to the government of Saudi Arabia. (Exhibit 3, J; TR 61-62, 64-66; 80-86) He also worked part-time and got student loans. He still owes close to \$20,000 in student loans. (TR 63, 86; Exhibit M)

Applicant owns no foreign property and does he own any part of a foreign company. He provides support to his immediate family in Jordan of \$500 to \$800 per month to assist with rent, food and utility payments. In addition he has assisted them with purchases of furniture and provided \$15,000 to them since he moved to the U.S. (Exhibit 3; TR 56, 61, 99-100, 102)

Reference

Mr. H, a co-worker at the firm who has worked there since July 2002 to present, commended Applicant as making an important contribution to a project they worked on jointly. He assessed Applicant's fluency in Arabic as an asset. Mr. H is a friend of Applicant as well as a work colleague. (TR 32-38; 100-101)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

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

Conditions that could raise a security concern and may be disqualifying include:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

3. Contact and correspondence with foreign citizens are . . . infrequent;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is

clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family are citizens of, or resident or present in, a foreign country. These situations could create the potential for foreign influence that could result in the compromise of classified information. While I have considered these concerns, I conclude Applicant has presented sufficient evidence in mitigation⁽²⁾ under MC 1 and 3 to meet the burden⁽³⁾ those circumstances present. Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country. He has family members who are citizens of Jordan and live there; however, his parents became permanent residents of the U.S. in 2000 and live both in the U.S. and Jordan while they are trying to achieve the same status for his three minor sisters. While his three brothers live in Jordan, they work in the private sector and have no links to the government. While to study at a U.S. university Applicant received financial aid for tuition worth \$80,000 from a princess from Saudi Arabia, the support was part of a formal scholarship program and the check was sent directly to the university. He never met the princess, but simply reported his grades to the embassy. There was no evidence Applicant had any obligation to the princess or to the government of Saudi Arabia based on this educational scholarship.

Also, these security concerns are mitigated by the fact that Applicant's family in Jordan have not in the past been subject to pressure. Since they have no ties to the government, it is unlikely that they are foreign agents or in a position to be pressured. Any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Further, except for his parents who live with Applicant when they are resident in the U.S., Applicant has limited contact with the rest of the family in Jordan. Thus, I conclude that there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. While he provides support to his parents and sisters, that alone would not make him subject to duress as he gives them a minimal amount of support. Given Applicant's history of responsible conduct as evidenced by his reference from his work place, I conclude it is highly unlikely that he would succumb to any coercion if any of his family members living in Jordan would be subject to pressures or create a situation that could result in the compromise of classified information. I conclude Applicant is not vulnerable to duress merely because of these family ties. Further, his reference attests to his good character and professionalism at work.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.d. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

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

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s)(spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States; 2. Contacts with foreign citizens are the result of official United States Government business; 3.

Contact and correspondence with foreign citizens are casual and infrequent; 4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required; 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

3. Jordan is a constitutional monarchy with a developing economy and is described by the U.S. Department of State Consular Information Sheet as "modern and Western-oriented" with Islamic ideals and beliefs. The Government presented no evidence of a hostile relationship between the U.S. and Jordan. The Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties in that country do not pose a security risk. However, there is no such hostile relationship between the U.S. and Jordan. U.S. concerns are over the general volatile situation in that region of the world. (Exhibit I; TR 107-108)