

KEYWORD: Foreign Influence

DIGEST: Applicant's mother is a permanent U.S. resident currently living in Jordan. Applicant's six siblings are foreign citizens living in Jordan, Kuwait, and Saudi Arabia. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his relatives' citizenship and residence. Clearance is denied.

CASENO: 02-11083.h1

DATE: 03/02/2005

DATE: March 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11083

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant's mother is a permanent U.S. resident currently living in Jordan. Applicant's six siblings are foreign citizens living in Jordan, Kuwait, and Saudi Arabia. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his relatives' citizenship and residence. Clearance is denied.

STATEMENT OF THE CASE

On March 5, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 12, 2004, Applicant answered the SOR and requested a hearing. On September 28, 2004, I was assigned the case. On October 7, 2004, a hearing was convened in this matter. On October 18, 2004, the transcript (tr.) of the hearing was received.

FINDINGS OF FACT

The SOR alleges Foreign Influence and Personal Conduct. The Applicant admits to the following: his mother is a permanent resident of the United States and is currently in Jordan receiving medical treatment; four of his sisters live in Jordan; one sister is a Lebanese citizen living in Kuwait; his one sister is blind and he sends her \$100 to \$200 per month to assist her with her medical bills; he has a brother who is a Jordanian citizen living in Saudi Arabia; in 2003 Applicant sent his brother in Saudi Arabia \$20,000 to assist his brother in his company. The debt was repaid in 2004; he has a brother who is a Jordanian citizen living in Jordan; his parents-in-law are permanent residents of the U.S. residing in the U.S.; his father-in-law is a retired maintenance supervisor who worked for the Kuwaiti ministry of general works; he has a sister-in-law who is an Egyptian citizen living in Egypt; he has a sister-in-law who is a Jordanian citizen living in Jordan; he has a brother-in-law who is a Jordanian citizen who is a permanent U.S. citizen living in the U.S.; in 2001 he borrowed \$30,000 from his brother-in-law as a down payment on a house. That debt has been repaid. In 2003, he borrowed \$50,000 from his brother-in-law to buy half interest in a truck stop; in 1990, he traveled to Kuwait. In 1988 he traveled to Jordan, Israel, and Turkey. In 2002, he traveled to Saudi Arabia.

Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 48 years old mechanical engineer who has worked for a defense contractor since July 1999 and is seeking to maintain a secret security clearance. Applicant was born on the West Bank of Palestine in 1956. At that time, the country was occupied by Jordan. In 1960, he and his family moved to Kuwait. In 1961, Applicant returned to Jordan, lived with his grandmother, and attended the first and second grades. In 1964, he rejoined his family in Kuwait where Applicant remained until he graduated from high school. Applicant's father was a carpenter. From 1975 to 1980, Applicant attended school in Egypt. In 1980, he returned to Kuwait to work for an airline until 1982 when he came to the U.S. for an occupational license examination. Following the examination, he stayed in the U.S.

While in the U.S., Applicant met a woman, married, and, in 1990, became a U.S. citizen. Applicant considers becoming an American citizen the biggest achievement of his life. (Tr. 66) His being granted U.S. citizenship was a "big, big accomplishment." (Tr. 67) His second wife was a Jordanian citizen and is now a U.S. citizen. She became a U.S. citizen in February 1990. In 1990, Applicant, his wife and daughter returned to Kuwait for a family visit. They were in Kuwait when Iraq invaded Kuwait. The U.S. embassy was of no assistance. Applicant and his wife used their Jordanian passport to leave Kuwait for Jordan. They used their U.S. passports when they left Jordan. In 1998, his Jordanian passport, which was expired at the time, was lost when his van was stolen. Neither Applicant nor his wife maintain any foreign passport.

While living in Kuwait, Applicant noted the high level of discrimination between Kuwaiti citizens and others. (Tr. 41) When his father died in Kuwait, his mother and brother were not allowed to stay, but had to leave for Jordan.

During 1996, Applicant entered into a business arrangement to send dental products to Saudi Arabia. Applicant purchased the goods at a local discount store and shipped them overseas in four shipments. When Applicant was not paid for the fourth shipment, the business arrangement ended.

In 2000, Applicant watched a telethon during Ramadan, a holy month of the Muslim year, showing an organization providing food, medicine, and humanitarian aid. Applicant made a \$200 donation. A year later, in December 2001, the foundation was listed as a hostile/terrorist organization. In December 2002, Applicant visited his brother in Saudi Arabia. In 2003, Applicant's wife and children rented an apartment for two and a half months while visiting Jordan, Syria, and Egypt. Renting an apartment was less expensive than renting hotel rooms.

Applicant does not consider either he or his immediate family are or were ever citizens of Kuwait, Jordan, or Palestine. He had a Jordanian passport because Jordan was governing the country where he was born. He considers himself a hard working citizen of the U.S. (Gov Ex 3) His family in the U.S. and his life here are most important.

His mother is a permanent U.S. resident, who left the U.S. approximately three months prior to the hearing to travel to Jordan. She routinely visits the U.S. for three or four months each year. All six of his siblings live overseas. One of his sisters, living in Jordan, is a housewife married to a school teacher who lives in Chicago. Applicant talks with her by telephone every three months. One sister, living in Jordan, is legally blind and is married to a man who used to be a painter. Applicant sends his sister \$100 to \$200 on occasion to help his sister buy medicine. He talks with her every three months. One sister, living in Saudi Arabia, is a housewife married to a computer engineer. One sister, living in Kuwait, is a housewife married to an electrician. His last sister is a divorced housewife living in Jordan. One brother is in the computer business living in Saudi Arabia. His other brother is currently unemployed, has his green card, and is waiting for his immigration process to proceed. He hoped to come to the U.S. in November 2004. During a 2003 family visit to Jordan with his wife, Applicant got into a family feud, as a result of which he did not talk with his sisters and brothers for six month after he returned to the U.S. (Tr. 43)

Applicant's father-in-law is a retired supervisor in the Kuwait Ministry of Labor/Transportation. The ministry was in charge of maintenance of highways, schools, and utilities. He was a painter. His parents-in-laws are permanent U.S. residents living in the U.S. They have not become U.S. citizens because of their English language skills. Applicant's sister-in-law is a housewife living in Egypt. Her husband was a teacher, but is now a farmer. One sister-in-law, with whom he has no contact, is a housewife living in Jordan. A brother-in-law, a naturalized U.S. citizen living in the U.S., is an aircraft mechanic. Another brother-in-law, living in the U.S., previously managed a truck stop in the U.S. leased by Applicant. In February 2003, Applicant became a partner in the truck stop and in April 2003, he became the owner. (Tr. 73) His last brother-in-law is a U.S. citizen who works in a convenience store.

Since getting his current job, he has obtained his master's degree. In September 2001, he purchased a home in the U.S. He has four children, ages seven to 15, who are U.S. citizens, born in the U.S. He has been up-front about his relatives. There is nothing he can do about them. His siblings are poor and not in a position to attract attention. None of his siblings or in-law know the name of his employer or the nature of his work. He is loyal to the U.S., has sworn to protect this country, and has U.S. citizenship by choice. He wants his children to grow up in the U.S. and wants his children and his country to be safe.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. The Government established the Applicant's mother, a permanent U.S. resident, is residing in Jordan and his six siblings are citizens of and residing in foreign countries. Disqualifying Condition (DC) 1 (E2.A2.1.2.1. *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*) applies.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ⁽²⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

The DOHA Appeal Board has held evidence that an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption that those contacts are not casual in nature. The applicant then has the burden of presenting evidence to refute or rebut the government's case against the applicant, or extenuate or mitigate the facts and circumstances of the applicant's case that have been admitted or proven. ISCR Case No. 00-0484 (February 1, 2002) at p. 4. Rather than dispelling that presumption, the evidence of record establishes that Applicant's relations with his immediate family members are not casual. Applicant talks with his sibling every three months. He provides financial support to one sister to assist her with medicine. In 2003, he visited his siblings in Jordan. Even though he did not speak with his siblings for six months after returning from his 2003 visit, Applicant has not shown that the contacts are infrequent and casual.

Security concerns raised by the foreign citizenship and/or residency of Applicant's family members may be mitigated where it can be determined that they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the family member and the United States (*see* E2.A2.1.3.1.). Applicant's sisters are not employed outside of the home. One brother works in a computer business in Saudi Arabia and his other brother is unemployed, has his green card, and is waiting for his immigration process to allow him to come to the U.S. The record does not establish any other of Applicant's relatives living abroad, are now, or have ever been, agents of a foreign government, security or intelligence service.

However, the analysis does not end with a determination that Applicant's relatives are not agents of a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non-coercive means of influence being brought to bear on, or through the foreign relations. In fact, he is very close to his parents, as they come to visit him in the United States for three months every year. Under these particular circumstances, there remains the possibility of pressure being placed on his foreign relatives, and through them, on the

Applicant. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. I find against Applicant as to SOR 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., and 1.i.

In 2003, Applicant and his brother in Saudi Arabia entered into an investment in computer inventory. Applicant's investment has been repaid. This transaction does not show foreign influence. I find for Applicant as to SOR 1.h.

Applicant's parents in-laws are permanent U.S. residents living in the U.S. His three brothers-in-law reside in the U.S. His in-laws residing in the U.S. are not of concern. I find for Applicant as to SOR 1.k., 1.n, and 1.p. Applicant's sisters-in-law live in Egypt and Jordan. His contact with them is infrequent and casual. C 1 applies. I find for Applicant as to SOR 1.l. and 1.m.

In 2003, Applicant's wife and children rented an apartment for two and a half months while visiting Jordan, Syria, and Egypt. An apartment was rented instead of hotel rooms because it was less expensive. I do not find renting an apartment instead of renting hotel rooms to be of security significance. Nor do I find their foreign visit for two and a half months to be of security significance. I find for Applicant as to SOR 1.q.

Applicant traveled to Saudi Arabia in 2002, to Jordan, Israel, and Turkey in 1998, and to Kuwait in 1990. Foreign travel without more is not of security significance. Applicant traveled to visit his family. This shows affection for his family, but does not establish foreign influence. I find for Applicant as to SOR 1.r., 1.s., and 1.t.

Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security.

During 1996, Applicant entered into a business arrangement to send dental products to Saudi Arabia. The products could be purchased at local discount department chain stores much cheaper than in Saudi Arabia. Applicant went to the local department stores purchased the goods off the shelf and mailed them to Saudi Arabia on four occasions. When the purchaser discovered the price of the goods in the department store, he refused to pay Applicant for the forth shipment and the arrangement ended. This was not an export business. In October 2000, Applicant completed a Questionnaire for National Security Position, Standard Form (SF) 86. Question 11 asked him to list his employment activities. He did not list the four shipments. His failure to list the shipments was not a deliberate omission, concealment, or falsification of a material fact. I find for Applicant as to SOR 2.a.

Applicant has significant ties to the U.S., as evidenced by his acquisition of U.S. naturalized citizenship in 1990, his continuous employment with a U.S. defense contractor since 1999 with no apparent security violations, he received his master's degree here, maintains a residence in the U.S., he has declared allegiance to the U.S., his wife and four children are citizens of the U.S. living in the U.S. The Government has not alleged, and the evidence does not show, that Applicant is anything but a loyal U.S. citizen. However, the issue is not his loyalty, but whether he is *vulnerable* to foreign influence that could result in the compromise of classified information because of his foreign relatives. Applicant has done nothing wrong. It is because his mother and siblings are foreign citizens living in Jordan, Kuwait, and Saudi Arabia that Applicant's clearance must be denied.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Foreign Influence: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: For the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: For the Applicant

Subparagraph 1.p.: For the Applicant

Subparagraph 1.q.: For the Applicant

Subparagraph 1.r.: For the Applicant

Subparagraph 1.s.: For the Applicant

Subparagraph 1.t.: For the Applicant

Paragraph 2 Personal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

2. ISCR Case No. 98-0419 (April 30, 1999) at p.5.