

DATE: December 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31522

ECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-one year old Applicant (who immigrated to the U.S. in 1981) and two of his siblings are naturalized U.S. citizens residing in the U.S. Applicant resides here with his native-born U.S. citizen wife and two children. The Jordanian citizenship and residency status of Applicant's mother and seven other siblings, none of whom are agents of a foreign government or in positions to be exploited by the Jordanian government, and whom Applicant has not seen since 1981, does not constitute an unacceptable security risk. Under the specific facts in evidence herein, the government's security concerns have been mitigated by Applicant's strong preference for, and demonstrated loyalty and allegiance to, the United States, over Jordan. Clearance is granted.

STATEMENT OF THE CASE

On August 29, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated October 3, 2003, Applicant responded to the SOR allegations and requested a hearing. The case was initially assigned to another administrative judge on April 7, 2004, and a notice of hearing was issued that same date, but that hearing was postponed at the request of Applicant's attorney. The case was reassigned to me on June 8, 2004, due to caseload considerations. A notice of hearing was issued that same date and the hearing was held before me on June 24, 2004. During the hearing, two Government exhibits, one Applicant exhibit, and the testimony of two Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on July 7, 2004.

RULINGS ON PROCEDURE

At the commencement of the government's case Department Counsel requested Official Notice be taken of United States Department of State, Bureau of Consular Affairs, *Consular Information Sheet: Jordan*, dated February 10, 2003. Pursuant to Rule 201, Federal Rules of Evidence (F.R.E.), I took Official Notice as requested, without any objection by Applicant.

During final argument, Department Counsel conceded Applicant had mitigated the allegation of foreign preference under Guideline C (subparagraph 1.a.) and asked that I find for Applicant on that allegation.⁽¹⁾

FINDINGS OF FACT

Applicant has admitted the factual allegation pertaining to foreign preference under Guideline C (subparagraph 1.a.), as well as the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 2.a., 2.b., a portion of 2.c., and 2.d.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a defense contractor, and he is seeking to retain a SECRET security clearance which was initially granted to him in 1992.

Applicant was born in 1963 in the Hashemite Kingdom of Jordan (Jordan)--a constitutional monarchy--whose interests are not inimical to the United States. Over the next 18 years, while residing with his family, including nine sisters and brothers, he exercised the rights and privileges, and performed the responsibilities, of a citizen of Jordan. In 1981, he moved to the United States to obtain better educational opportunities⁽²⁾ and to avoid serving in the Jordanian military.⁽³⁾ He received his B.S. degree in electrical engineering from a university in the United States 10 years later.⁽⁴⁾ After residing in the United States for about eight years, in February 1989, and upon completing the required immigration and naturalization citizenship process, Applicant became a naturalized citizen of the United States.⁽⁵⁾ At the time he took his oath of allegiance and was granted his new citizenship, Applicant renounced any allegiance to a foreign prince⁽⁶⁾ and reported his actions and intentions to the Jordanian consulate.⁽⁷⁾ Officials there informed him that despite his wishes, he could not relinquish his Jordanian citizenship.⁽⁸⁾ The U.S. Department of State later confirmed the Jordanian Government does not recognize Applicant's acquisition of U.S. citizenship by naturalization.⁽⁹⁾ While Applicant would prefer not to be a dual citizen of Jordan, and he acknowledges the position of the Jordanian Government, he still considers himself to be only a U.S. citizen.⁽¹⁰⁾

Since becoming an American citizen, Applicant has exercised the rights and privileges, and performed the responsibilities, of a citizen of the United States. He registered with the Selective Service System⁽¹¹⁾ and was assigned a registration number,⁽¹²⁾ and obtained, and used, a United States passport.⁽¹³⁾ Conversely, since becoming a naturalized U.S. citizen, Applicant has not returned to Jordan since he left in 1981;⁽¹⁴⁾ has not accepted any benefits from Jordan;⁽¹⁵⁾ has not served in the Jordanian military and is unwilling to do so;⁽¹⁶⁾ has not used his Jordanian citizenship to protect financial or business interests in Jordan;⁽¹⁷⁾ has no such financial interests and owns no property in Jordan;⁽¹⁸⁾ and has never voted in a Jordanian election.⁽¹⁹⁾ Moreover, he does not have a current Jordanian passport and does not intend to ever obtain one because he travels with his U.S. passport.⁽²⁰⁾

Applicant married his current wife--a native-born U.S. citizen--in 1999,⁽²¹⁾ and they reside in the U.S. with their four-year-old daughter and two-year-old son.⁽²²⁾ He was previously married for 10 years to another U.S. citizen.⁽²³⁾

Applicant's father--formerly the owner of a small grocery store in Jordan--is deceased.⁽²⁴⁾ His mother, a widow and former homemaker, is a citizen and resident of Jordan.⁽²⁵⁾ Applicant calls her three or four times each year,⁽²⁶⁾ and

sends her between \$3,000.00 and \$6,000.00, in two installments, each year.⁽²⁷⁾ They have not see each other since Applicant moved to the U.S. in 1981--23 years ago.⁽²⁸⁾

He also has nine siblings. Two of his brothers are naturalized U.S. citizens residing with their families in the U.S.⁽²⁹⁾ A third brother remains a citizen and resident of Jordan.⁽³⁰⁾ About two to four years ago, Applicant gave this brother \$3,000.00 to purchase some land,⁽³¹⁾ and the brother subsequently relocated from one residence to another.⁽³²⁾ Applicant is not a co-owner of the land.⁽³³⁾ Applicant generally phones his brother two times each year, and they last spoke about six months before the hearing.⁽³⁴⁾ He has not seen this brother since he departed Jordan.⁽³⁵⁾

His youngest sister is single, and while she had previously worked for a doctor, is now unemployed, and resides with their mother in Jordan.⁽³⁶⁾ Applicant and this sister speak whenever he calls their mother, if she is present.⁽³⁷⁾ He has not seen this sister since he departed Jordan.⁽³⁸⁾ Applicant also has five other sisters, four of whom are citizens and residents of Jordan. Three sisters are married: one is married to a nurse,⁽³⁹⁾ one is married to a painter in an oil refinery,⁽⁴⁰⁾ and the occupation of the third one's current husband (she was previously divorced)⁽⁴¹⁾ is not known.⁽⁴²⁾ One sister is a widow,⁽⁴³⁾ and she resides in Saudi Arabia where her late husband had a business.⁽⁴⁴⁾ The remaining sister's marital status and residence are not known.⁽⁴⁵⁾ Applicant's contact with these sisters varies. He spoke with one sister in the last two years, when the sister was at their mother's residence; one sister about one time in the past four to five years; one more than five years ago; one not within the past five to 10 years; and one not in the past 10 to 15 years.⁽⁴⁶⁾ He has not seen any of these sisters since he departed Jordan.⁽⁴⁷⁾

None of his siblings or other relatives are associated with the Jordanian Government or any intelligence services or organizations.⁽⁴⁸⁾ Likewise, none of them have ever inquired about his job or indicated anyone ever approaching them to pressure them to do so.⁽⁴⁹⁾

Applicant has thought about visiting Jordan with his wife and family but does not intend to do so unless he knows it is "absolutely safe for them to go there" and "return intact."⁽⁵⁰⁾

Applicant has been employed by the same government contractor, or successor organization, since July 1992, and he is currently a senior electrical engineer II and team leader. Department managers working closely with him referred to Applicant by using the terms committed family man, honest, pretty detailed,⁽⁵¹⁾ exceptionally thorough,⁽⁵²⁾ extremely dedicated, and conscientious.⁽⁵³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[GUIDELINE 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.

[GUIDELINE B - FOREIGN INFLUENCE]: 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 not citizens of the United States or 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 security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the "clearly consistent with the interests of national security" standard⁽⁵⁴⁾ or "clearly consistent with the national interest" standard. For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. 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 avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has conceded its case under Guideline C. It had been alleged Applicant continued to actively "exercise" citizenship of Jordan because he maintained dual citizenship with Jordan and the U.S. His status in this regard would fall within Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1. (*the exercise of dual citizenship*). But aside from his birth in Jordan, Applicant has taken no steps to actively exercise that dual citizenship and the government offered no evidence to support the contention. To the contrary, Applicant tried to renounce his Jordanian citizenship when he took an oath "in a public ceremony . . . to renounce and abjure absolutely and entirely all allegiance to any

foreign prince, potentate, state or sovereignty of whom the applicant for U.S. citizenship was before a subject or citizen," and shortly thereafter registered with the Selective Service System to defend the United States, if called upon to do so. Under these facts, Applicant enjoys the benefit of Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1. (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) and FP MC E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). Thus, in light of the evidence presented, as well as the concession by the government, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case under Guideline C. Accordingly, allegation 1.a. of the SOR is concluded in favor of Applicant

The government has established its case under Guideline B. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, Applicant's mother and six of his siblings--not citizens of the United States or may be subject to duress. This situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the government has cited the fact Applicant's mother and six of his siblings are citizens and residents of Jordan. Based on the evidence, I conclude the security concerns manifested by the government, in this instance, are largely unfounded.

It is uncontroverted that Applicant's mother and six of his siblings--persons to whom he has close ties of affection--are citizens and residents of Jordan, and one sibling is a citizen of Jordan, residing in Saudi Arabia. Those simple facts, standing alone, are sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. 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: [\(55\)](#)

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

Applicant's mother is a widow, residing with one unemployed daughter. Three sisters are married: one is married to a nurse, one to a painter in an oil refinery, and the occupation of the third one's current husband is not known. One sister is a widow, and she resides in Saudi Arabia where her late husband had a business. The remaining sister's marital status and residence are not known. One brother remains in Jordan, but his occupation is unknown. None of his siblings or other relatives are associated with the Jordanian Government or any intelligence services or organizations. Applicant's contact with his family varies. He speaks with his mother and the one sister residing with her three or four times each year; with one brother, two times each year; with one sister once in the last two years; with another sister about one time in the past four to five years; with another sister, once more than five years ago; with another sister, not within the past five to 10 years; and with the remaining sister, not in the past 10 to 15 years. He has not seen any of these sisters since he departed Jordan.

Applicant also has two brothers who are naturalized U.S. citizens, as well as two native-born U.S. citizen children and a native-born U.S. citizen wife, all of whom reside in the United States. These facts, when considered in light of the nature of the government in Jordan--a friendly Kingdom which is not hostile to the United States, and whose interests are not inimical to the United States--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein.

It should be noted that Department Counsel argued the significance of terrorist cells active in Jordan that target U.S. citizens throughout Jordan, especially in light of involvement by Jordanian-born leadership. [\(56\)](#) The thrust of the argument was the need for heightened awareness regarding applicant vulnerability to terrorist threats in Jordan and the presence of Applicant's family in "a hostile country." I do not characterize Jordan as a hostile country. It, as are many freedom-loving nations, is really a victim of terrorism and is striving to combat it. While there may be some merit to the overall argument, it must be remembered that terrorist cells also actively operate in even more western nations, such as England, Germany, Spain, and Italy. And, as shown by the events of 9/11, they also operate here in the U.S.

The residence and citizenship of Applicant's family members are clearly of security concern under Foreign Influence

Disqualifying Condition (FI DC) 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*), but the significance of that ruling is mitigated by the "protection" afforded by Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*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*). Also applicable in this instance are FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*) and E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). Applicant's contacts with many of his siblings is considered infrequent, if not rare, while his contacts with his mother and several other siblings is more frequent. Furthermore, the fact he has not seen those family members still residing in either Jordan or Saudi Arabia in 23 years is of major significance. After an examination of the evidence, I determine that Applicant's mother and siblings, considering their citizenship and residency status, do not constitute an unacceptable security risk. Their continuing personal relationship, and his furnishing funds to his mother, sister, and brother, is viewed in positive terms, having no security significance. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegations 2.a. through 2.d. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Paragraph 2., Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the 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 Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. Tr., at 67.

2. Tr., at 27; Memorandum attached to Response to SOR, dated October 3, 2003, at 5.

3. *Id.* Response to SOR.

4. Government Exhibit 1 (Security Clearance Application (SF 86), dated July 3, 2002), at 2.

5. *Id.*, at 1.
6. Tr., at 55.
7. Government Exhibit 2 (Statement, dated August 22, 2002), at 2.
8. *Id.*
9. Letter from U.S. Department of State, Office of Citizen Consular Services, dated November 7, 1990, attached to Response to SOR, *supra* note 2.
10. Government Exhibit 2, *supra* note 7, at 2.
11. Government Exhibit 1, *supra* note 4, at 7.
12. *Id.*
13. *Id.*, at 1.
14. Government Exhibit 2, *supra* note 7, at 1.
15. Memorandum attached to Response to SOR, *supra* note 2, at 2.
16. Government Exhibit 2, *supra* note 7, at 2.
17. *Id.*
18. *Id.*
19. Memorandum attached to Response to SOR, *supra* note 2, at 2.
20. Government Exhibit 2, *supra* note 7, at 2.
21. Government Exhibit 1, *supra* note 4, at 3.
22. Tr., at 18.
23. Government Exhibit 1, *supra* note 4, at 3.
24. Government Exhibit 2, *supra* note 7, at 2.
25. Government Exhibit 1, *supra* note 4, at 3.
26. Tr., at 40-41.
27. Tr., at 41-42.
28. Tr., at 59.
29. Government Exhibit 2, *supra* note 7, at 3.
30. Tr., at 48.
31. Tr., at 54; Response to SOR, *supra* note 2, at 2.
32. Tr., at 48-49.

33. Tr., at 47.

34. Tr., at 48.

35. Tr., at 59.

36. Government Exhibit 2, *supra* note 7, at 4.

37. *Id.*

38. Tr., at 59.

39. Tr., at 36.

40. Tr., at 37.

41. Tr., at 50.

42. Tr., at 36.

43. Tr., at 37-38.

44. Tr., at 38.

45. Tr., at 38.

46. Tr., at 50-53.

47. Tr., at 59.

48. Government Exhibit 2, *supra* note 7, at 5.

49. *Id.*

50. Tr., at 54.

51. Tr., at 63.

52. Letter from Production Manager, dated September 30, 2003, attached to Response to SOR, *supra* note 2.

53. Letter from Department Manager for Test Engineering, dated September 30, 2003, attached to Response to SOR, *supra* note 2.

54. Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

55. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.

56. Tr., at 68.