KEYWORD: Foreign Influence

DIGEST: Fifty-two year old Applicant, who immigrated to the U.S. in 1982, and became a naturalized U.S. citizen in 1986, resides in the U.S. with his Jordanian-born U.S. citizen wife (whose parents are U.S. citizens) and three native-born children. He has sponsored the emigration of his siblings from Jordan, and that emigration process has already commenced. None of his siblings are agents of a foreign government or in positions to be exploited by the Jordanian government. Under the specific facts in evidence herein, the government's security concerns have been mitigated. Clearance is granted.

CASENO: 02-17369.h2

DATE: 05/25/2006

DATE: May 25, 2006

In re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 02-17369

REMAND DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-two year old Applicant, who immigrated to the U.S. in 1982, and became a naturalized U.S. citizen in 1986, resides in the U.S. with his Jordanian-born U.S. citizen wife (whose parents are U.S. citizens) and three native-born children. He has sponsored the emigration of his siblings from Jordan, and that emigration process has already commenced. None of his siblings are agents of a foreign government or in positions to be exploited by the Jordanian government. Under the specific facts in evidence herein, the government's security concerns have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On May 23, 2001, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).[(1)] On May 7, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR detailed reasons under Guideline B (foreign influence) 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 June 14, 2004, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on February 14, 2005. The case was assigned to me on March 10, 2005. A notice of hearing was issued that same date and the hearing was held before me on March 30, 2005. During the hearing, two Government exhibits and Applicant's testimony were received. The transcript (Tr.) was

received on April 8, 2005. On October 27, 2005, I concluded that under the specific facts in evidence, the government's security concerns had been mitigated, and I issued a decision in which I found that it was clearly consistent with the national interest too grant or continue a security clearance for Applicant.

The government subsequently filed a notice of appeal and submitted an appeal brief. It is not known if a reply brief was filed by Applicant. My findings of fact were not challenged on appeal. The Appeal Board considered "Whether the Record Supports the Administrative Judge's Ultimate Conclusions" with particular focus on my analysis of two Guideline B mitigating conditions (numbers MC 1 (actually E2.A2.1.3.1.) and MC 5 (actually E2.A2.1.3.5.)) and my application of the "whole person" concept.

On May 23, 2006, the Appeal Board ruled, by a two-to-one majority, that my analysis of MC 5 was sustainable. It also ruled that my analysis of MC 1 raised significant doubts as to whether I applied the current version of MC 1 because I had cited a prior Appeal Board decision which was "no longer good law for analyzing foreign influence cases." It concluded that my error concerning MC 1 influenced my "whole person" concept analysis but did not significantly undercut that analysis. Accordingly, the Appeal Board ordered me to (1) reconsider my decision by issuing a new decision that "clearly applies the current version of MC 1" and in which I should (2) "consider the applicability of the general factors" identified as those comprising the "whole person" concept.

RULINGS ON PROCEDURE

The Rulings On Procedure set forth in my initial decision, dated October 27, 2005, are hereby incorporated herein as though they were expressly re-written below.

FINDINGS OF FACT

Because my Findings of Fact were not challenged on appeal, those set forth in my initial decision, dated October 27, 2005, are hereby incorporated herein as though they were expressly re-written below.

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 guideline most pertinent to an evaluation of the facts of this case:

[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 guideline 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 standard that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."[(2)] For the purposes herein, despite the different language in each, I have concluded all of the standards are 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

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 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 siblings and his wife's parents--are either not citizens or residents 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 that Applicant's in-laws, brother, and some of her six sisters are Jordanian citizens residing either in the U.S. or in Jordan, and her other sister is a Jordanian citizen residing in Sweden. Based on the evidence, I conclude the security concerns manifested by the government, in this instance, are largely unfounded.

It appears that Applicant's in-laws and siblings--persons to whom he has close ties of affection--are either citizens or residents of Jordan or Sweden. 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 should not, as a matter of law, be disqualifying under Guideline B.[(3)]

The following chart provides the current status of each of Applicant's family members as reflected by the evidence developed herein.

FAMILY MEMBER	CITIZENSHIP	RESIDENCY
1st sister	Sweden	Sweden
2nd sister	Jordan, married to U.S. citizen	U.S. resident alien, currently in Jordan
3rd sister	Jordan	Jordan
4th sister	Jordan	Jordan
5th sister	Jordan	Jordan. Received U.S. resident alien card and intending to immigrate to U.S. shortly
6th sister	Jordan	Jordan
brother	Jordan	Jordan
mother-in-law	U.S.	U.S.
father-in-law	U.S.	Jordan

Also, as noted above, Applicant has already applied for those sisters and his brother still residing in Jordan to immigrate to the U.S. as resident aliens with the intention of applying for U.S. citizenship when they become eligible.

Department Counsel argued the significance of terrorists active in Jordan. The apparent 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 that country. Jordan, 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 some 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 conclusion is mitigated 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*).

My general discussion of Guideline B appearing in my initial decision quoted a statement by the Appeal Board which noted 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." I did not cite the earlier version of the mitigating condition as dispositive based on a particular condition, and in fact, quoted the language merely as a proposition of continuing wisdom under the entire guideline. Furthermore, in considering my overall analysis of Guideline B, it stretches credulity to argue that quotation "set a mistaken framework for [my] entire analysis of the case."

None of Applicant's siblings or in-laws meet the definition of "agent of a foreign power" under 50 U.S.C. § 438(6) and 50 U.S.C. § 1801(b). Similarly, none of them would be considered as an "agent of a foreign power" under the more expansive definition adopted by the Appeal Board. As noted above, those extended family members who are not U.S. citizens either reside or work in Sweden or Jordan, or in the U.S., while some who are U.S. citizens either reside or work in Jordan or the U.S. Except for his father-in-law, a U.S. citizen who resides in retirement in Jordan, all of the remaining family members are employed in non-governmental capacities in the private sector.

As noted above, the "whole person concept" is the heart of the analysis of whether an applicant is eligible for a security clearance.[(4)] In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. In fact, the Appeal Board has repeatedly held:

Although the position of an applicant's foreign family members is significant and may preclude the favorable application of Foreign Influence Mitigating Condition 1, the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general

factors.[(5)]

One factor which must be considered is "the potential for pressure, coercion, exploitation, or duress." In that regard, it is important consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.[(6)] In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."[(7)] Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the U.S. through the applicant. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

Equally as important is the necessity of considering Applicant's vulnerability to exploitation through his relatives. Applicant--a naturalized U.S. citizen since 1986--is a mature individual with very close ties to the U.S. His wife and both her parents are naturalized U.S. citizens, one sister is a U.S. resident alien (currently in Jordan), and another sister has been approved to immigrate to the U.S. shortly. As noted above, Applicant has applied for those sisters and his brother still residing in Jordan to immigrate to the U.S. as resident aliens with the intention of applying for U.S. citizenship when they become eligible. Because of Applicant's deep and long-standing relationships and loyalties in and to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. Consequently, I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk. 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 1.a. through 1.f. 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 Section E3.1.25. of Enclosure 3 of the Directive, are:

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

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: 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 Applicant. Clearance is granted.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated May 23, 2001).

2. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3.; Sec. 3..2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.); Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).

3. For an expansive discussion of Appeal Board decisions under Guideline B, *see* the decision of my esteemed colleague Administrative Judge Michael J. Breslin, in ISCR Case No. 03-21434 at 7-17 (May 24, 2006).

4. ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).

5. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).

6. *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

7. ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).