

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 51-year-old naturalized citizen of the United States. He was born in Saudi Arabia and came to the U.S. in 1980 on a Saudi scholarship. He has worked for defense contractors since 1992, and became a naturalized U.S. citizen in 1997. Applicant twice used his Saudi passport to return to that country for personal visits since becoming a U.S. citizen, but has since renounced his Saudi citizenship and returned the passport. Applicant's mother, three brothers, and two sisters live in Saudi Arabia. He also has extensive ties to the United States, including his spouse, his professional career, and substantial financial interests. Applicant has mitigated the security concerns arising from the possible foreign preference and foreign influence. Clearance is granted.

CASENO: 02-21927.h1

DATE: 01/18/2005

DATE: January 18, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21927

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

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SYNOPSIS

Applicant is a 51-year-old naturalized citizen of the United States. He was born in Saudi Arabia and came to the U.S. in 1980 on a Saudi scholarship. He has worked for defense contractors since 1992, and became a naturalized U.S. citizen in 1997. Applicant twice used his Saudi passport to return to that country for personal visits since becoming a U.S. citizen, but has since renounced his Saudi citizenship and returned the passport. Applicant's mother, three brothers, and two sisters live in Saudi Arabia. He also has extensive ties to the United States, including his spouse, his professional career, and substantial financial interests. Applicant has mitigated the security concerns arising from the possible foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On March 6, 2002, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 25, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, Guideline C, Foreign Preference, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on October 2, 2003. He elected to have a hearing before an administrative judge. On October 20, 2003, Applicant submitted an amended answer to the SOR.

The case was assigned to me on August 18, 2004. With the concurrence of the parties, I conducted the hearing on September 27, 2004. At the outset of the hearing, Government counsel moved to withdraw the allegations under Guideline E, without objection, and I granted the motion. The government presented nine exhibits. Applicant's counsel presented eight exhibits, the testimony of two witnesses, and Applicant's testimony on his own behalf. DOHA received the transcript (Tr.) on October 7, 2004.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.a, 1.b, and 3.a of the SOR. Amended Answer to SOR, dated October 20, 2003. He admitted the factual allegations in ¶¶ 2.a, 2.b (in part), and 2.c of the SOR, with explanations. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 51 years old. Ex. 1 at 1. He was born in Saudi Arabia. *Id.* He grew up in that country and obtained his bachelor's degree there in 1977. Tr. at 24. Applicant worked at a major university in Saudi Arabia from 1977 to 1980.

Applicant received a scholarship from the Saudi university to study in the United States. Amended Answer to SOR, *supra*, at 3. He was a student at a university in the United States from 1980 until his graduation in 1985. Tr. at 23. The Saudi university considered Applicant an employee of that institution while he was studying in the U.S. Tr. at 38; Amended Answer to SOR, *supra* at 3; Ex. 1 at 9. He did post-graduate work at a prestigious university in the United States from 1986 until 1992. Tr. at 23.

From 1992 until 1995, Applicant worked as an information systems security engineer for a U.S. company. Ex.1 at 6; Tr. at 25. He next worked for an information technology firm from 1995 to 2001. Tr. at 26; Ex. 1 at 6. In that capacity, he worked on projects for numerous federal agencies and garnered several commendations. Exs. A and B. In order to perform his duties, he applied for and received access to confidential material. Ex. 2; Tr. at 31

Applicant became a naturalized citizen of the United States in December 1997. Tr. at 23; Ex. 1 at 1.

In 2001, Applicant began working for his present employer, a defense contractor, as an information security systems manager. Tr. at 30; Ex. 1 at 5. The employer handles projects for the federal government requiring security clearances. Tr. at 31. Applicant was recognized for his leadership in 2003 by being selected for special training and being certified as a project manager. Tr. at 30.

Applicant got married in the United States in 1985. Ex. 1 at 7. His wife was born in Lebanon and has been a naturalized citizen of the United States for 33 years. Tr. at 24; Ex. 1 at 9. Her father is 93 and lives in Lebanon; her siblings live in

the United States. Tr. at 47-48. Applicant's wife has a Ph.D. in philosophy, logic, and ethics, and a law degree. Tr. at 82. She is a law school professor and also serves as a guest speaker for a U.S. government agency overseas, specializing in the topic of democracy and Islam. Tr. at 83-84. She has made several government-sponsored trips overseas to speak to foreign audiences on related subjects. Tr. at 84-85.

Applicant's father worked for an Arabian and American oil company in Saudi Arabia all his adult life until he retired. Tr. at 32. He then began an ironwork shop, which he ran until he passed away in January 2000. *Id.*; Tr. at 11.

Applicant's mother is 70 years old and a retired homemaker living in Saudi Arabia with one of Applicant's brothers. Tr. at 32, 33, 51; Ex. 1 at 8. She has no ties to the government. Tr. at 32. Applicant has seen his mother twice in the last four years. Tr. at 34. His mother and one of his sisters came to visit him in the US in January 2004 following his surgery. Tr. at 58. He gives his mother money several times a year, totaling about \$6,000.00 per year. Tr. at 36. Applicant talks with his mother by telephone once or twice a month. Tr. at 55. He does not discuss his work with his mother. Tr. at 37.

Applicant has two sisters living in Saudi Arabia. Tr. at 33. Both were school teachers and later principals. *Id.* One sister is now retired. Neither has any other connection to the government. *Id.* Applicant saw one of his sister twice in the last four years; he has not seen his other sister in four years. Tr. at 34-35. He speaks with his sisters by telephone once or twice a month. Tr. at 55. Applicant does not provide support to his sisters. Tr. at 36.

Applicant has three brothers and all live in Saudi Arabia. Tr. at 33. One operates the ironwork shop started by his father. Two brothers are commercial airline pilots who were educated in the U.S. (Tr. at 57), and certified as pilots by the Federal Aviation Administration. Tr. at 33-34. Neither ever served in the military. Tr. at 34. Both fly commercial aircraft to the United States on occasion, giving Applicant the opportunity to meet them. *Id.* One brother flies to the U.S. more frequently, and Applicant sees him during layovers. Tr. at 35. Applicant has not seen his other two brothers in four years. *Id.*

Applicant traveled to Saudi Arabia twice since becoming a U.S. citizen. Tr. at 39. In 1999, he elected to travel to the mid-east to join his wife for a part of her government-sponsored lecture tour. Tr. at 39. He used the opportunity to visit his family in Saudi Arabia. Ex. 1 at 11. Because Applicant decided to travel on short notice-leaving no time to obtain a visa for Saudi Arabia-he traveled on his Saudi Arabian passport. Tr. at 39.

Applicant's second trip to Saudi Arabia since becoming a U.S. citizen occurred in January 2000, when Applicant's father passed away. Tr. at 40. The Saudi tradition is to bury the deceased within 24 hours, leaving Applicant insufficient time to apply for a visa. Tr. at 41, 43. He used his Saudi Arabian passport in order to attend the funeral. Tr. at 41.

Applicant understood that U.S. law does not prohibit a citizen from using a foreign passport. He was not aware of the potential significance that use might have until he applied for a security clearance in March 2002. Tr. at 41. In October 2003, Applicant renounced his Saudi Arabian citizenship and returned his (expired) passport. Ex. C; Tr. at 41, 46.

Applicant has no property, bank accounts, or assets in Saudi Arabia. Tr. at 36. He does not anticipate inheriting any property there. *Id.* Applicant has a well-paying job and substantial assets in the United States. Tr. at 69. He has voted in federal, state, and local elections in the United States. Tr. at 45.

Saudi Arabia is a monarchy based upon Islamic law. Ex. I at 1. The Saudi government does not recognize dual nationality and will confiscate the U.S. passport of a Saudi national who has become a U.S. citizen. *Id.* at 2. The United States and Saudi Arabia enjoy good relations. Ex. II at 7. Mutual concern about regional security, oil exports, and sustainable development have resulted in close economic and security ties. *Id.* The United States remains concerned about human rights conditions in Saudi Arabia, including abuse of prisoners, restrictions on speech, press, assembly, and association, discrimination against women and minorities, and suppression of worker's rights. *Id.* at 8. The U.S. is also concerned about terrorists in Saudi Arabia targeting American travelers. Exs. III, IV, V at 6-7, VI at 4-5.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. Directive, ¶ E2.A2.1.1.

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. Directive, ¶ E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence 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). "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.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline C, Foreign Preference

The Directive sets out circumstances that could indicate a disqualifying foreign preference. Directive, ¶ E2.A3.1.2. Under ¶ E2.A3.1.2.1, "[t]he exercise of dual citizenship" may be disqualifying. Similarly, ¶ E2.A3.1.2.2 indicates that the "[p]ossession and use of a foreign passport" may show a potentially disqualifying foreign preference. In this case, Applicant used his foreign passport twice after becoming a U.S. citizen. The use of a foreign passport is an exercise of the rights and privileges of a citizen of that foreign country. ISCR Case No. 98-0252 at pp. 7-8 (App. Bd. Sept. 15, 1999). Applicant's admissions are substantial evidence supporting these two potentially disqualifying conditions.

The Directive also sets out conditions that could mitigate security concerns related to foreign preference. Under ¶ E2.A3.1.3.1, it may be mitigating where "[d]ual citizenship is based solely on parents' citizenship or birth in a foreign country." Applicant became a citizen of Saudi Arabia because of his birth to Saudi parents in that country. However, he also exercised his Saudi citizenship when he used his Saudi passport after obtaining U.S. citizenship. ISCR Case No. 98-0252, *supra*. I conclude this mitigating condition does not apply.

It may also be mitigating where the activity in question is "sanctioned by the United States." Directive, ¶ E2.A3.1.3.3. Applicant used his Saudi passport to travel to Saudi Arabia on two occasions. United States' law does not prohibit a U.S. citizen from holding or using a foreign passport; however, recognizing that it is lawful is not the same as sanctioning the practice. Here, the United States did not direct, request, or require Applicant to use his foreign passport, it merely allowed Applicant to exercise his rights. I conclude this mitigating condition does not apply.

Finally, it may be mitigating where an "[i]ndividual has expressed a willingness to renounce dual citizenship." Applicant renounced his Saudi citizenship unequivocally and returned his passport to that country. Ex. C. Moreover, he has chosen to live in the United States for the greater part of his adult life, his wife is a U.S. citizen, he and his wife have risen to positions of responsibility and respect in their career fields, and he has all his assets here. I conclude this mitigating condition applies.

I carefully considered all the potentially disqualifying and mitigating conditions in light of the "whole person" concept. I conclude that Applicant has mitigated the security concerns arising from his previous exercise of dual citizenship.

Guideline B, Foreign Influence

Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "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." Paragraph E2.A2.1.3.1. defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant has a mother, three brothers, and two sisters who are citizens and residents of Saudi Arabia. Applicant maintains regular contact with his mother and siblings. These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001). I conclude this potentially disqualifying condition applies.

Under ¶ E2.A2.1.2.3 of the Directive, it may be disqualifying where, "[r]elatives . . . are connected with any foreign government." Two of Applicant's brothers are pilots for the national airline and Applicant's sisters worked for the national school system. I find this potentially disqualifying condition applies.

These security concerns can be mitigated where it is determined that "the immediate family members . . . 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 involved and the United States." Directive, ¶ E2.A2.1.3.1. Two of Applicant's brothers are employed by the national airline, and two sisters worked for the public school system, agencies controlled by the government. None of Applicant's brother or sisters are members of the ruling family or the government. There is no evidence indicating any one of them is an "agent of a foreign power." *See* 50 U.S.C.A. § 1801(b).

In assessing whether an applicant is vulnerable to exploitation through relatives in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Saudi Arabia is a monarchy founded upon Islamic law. Many aspects of Saudi legal traditions are inconsistent with the human rights embraced by the United States, including its treatment of women, prisoners, and minorities, and its protection of speech, press, assembly, and association. At the same time, Saudi interests in oil exports and the regional stability essential to that end have made it an ally of the United States in security, trade, and other political interests. Under the circumstances, the possibility that the government would attempt to exploit or pressure its residents to act adversely to the interests of the United States is limited.

It is important to consider the vulnerability to duress of Applicant's relatives in Saudi Arabia. As noted above,

Applicant's brother and sisters are not and have never been employed by the Saudi military forces. Applicant's sisters and two brothers have worked for organizations controlled by the government, specifically, the school system and the national airline. Applicant's other brother operates an independent family business, and his mother is retired. Under these circumstances, there is some opportunity for adverse influence against Applicant's relatives in Saudi Arabia.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through his ties with his relatives. Applicant maintains regular contact with his mother, sisters and brothers. I find he is bound by close ties of obligation and affection to his relatives in Saudi Arabia. At the same time, he has extensive ties to the United States. Applicant has now lived here most of his adult life, his spouse is a citizen and resident of the U.S., and all his financial interests are in the United States. He has worked for defense contractors for many years and was previously granted access to confidential material without adverse incident. Considering the extent of his ties to the United States, I find Applicant is not vulnerable to pressure or duress. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant has not seen his relatives in Saudi Arabia very frequently in the last four years. However, he maintains regular telephonic contact. As mentioned above, he sees one of his brothers from time to time when he comes to the U.S. on business. I conclude this mitigating condition does not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude Applicant has mitigated any potential security concerns arising from Applicant's family ties to Saudi Arabia.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

DECISION

In light of all of 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.

Michael J. Breslin

Administrative Judge