

KEYWORD: Foreign Influence

DIGEST: Applicant successfully mitigated security concerns relating to his father and several relatives residence in Palestine near Jerusalem and his wife and children's residence there for six years taking care of Applicant's ill mother. Most relatives, including his father, are U.S. citizens with no ties to governmental organization or groups that might sponsor terrorism. Applicant has lived in the U.S. for 30 years and has held a security clearance without any violations for over 20 years. Clearance is granted.

CASENO: 02-26130.h1

DATE: 03/31/2006

DATE: March 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26130

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant successfully mitigated security concerns relating to his father and several relatives residence in Palestine near Jerusalem and his wife and children's residence there for six years taking care of Applicant's ill mother. Most relatives, including his father, are U.S. citizens with no ties to governmental organization or groups that might sponsor terrorism. Applicant has lived in the U.S. for 30 years and has held a security clearance without any violations for over 20 years. Clearance is granted.

STATEMENT OF THE CASE

On April 13, 2005, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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 which 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated April 28, 2005, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on October 5, 2005, and a Notice of Hearing was issued November 18, 2005 for a hearing held on December 5, 2005. At the hearing, the Government introduced six exhibits and Applicant introduced eleven. All were accepted into evidence. The Government offered 12 official documents for administrative notice. The Applicant and three other witness testified on his behalf. The transcript was received on December 16, 2005.

FINDINGS OF FACT

Applicant admitted all but one of the nine specific security allegations under Foreign Influence Guideline B and requested a hearing. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 45-year-old employee of a major defense contractor working as a systems engineer since 1980. His family is Palestinian. He was born in Palestine and emigrated to the U.S. when he was 14 with his family in 1974. His father worked in a textile factory in the U.S. and, upon his retirement in 1982, he and his wife returned to their home village near Jerusalem. Applicant's mother became ill and his wife and three children lived with his parents between 1995 and 2001 caring for his mother. During that time, he traveled to Jerusalem ten times between 1998 and 2001 to visit his family and at least once a year between 1995 and 1998 (Exhs.1 and 6). His mother died in 2000 and Applicant has not traveled outside the U.S. since 2001.

Applicant's father still lives in the village where numerous family members reside. The village is under the security control of Israel. He has not been in the U.S. since a visit in 1985. He receives U.S. social security payments of \$440.00 per month and rents several shops beneath his residence to support himself. Applicant provides occasional cash gifts to his father in amounts of \$300 to \$500 twice a year. Applicant's has six siblings who are U.S. citizens living in the U.S. The seventh is a sister who is a U.S. citizen and lives in the same village. All of her children live in the U.S. and she visits them frequently. Two of his aunts and several cousins who are all U.S. citizens also live there.

Applicant's four uncles and over 60 cousins are living in the U.S. (Exh. 6). His mother-in-law also lives in the same village as his father but travels frequently to the U.S. to visit her family. She is a citizen of Palestine as are several cousins of his wife who also live there.

One cousin of Applicant is a U.S. citizen resident in Jordan whom he has not seen for seven years. He traveled to Jordan in 2000 with another cousin to meet a girl that cousin intended to marry.

Applicant notified his employer of all of his foreign travel (Exh. A). He has held a security clearance since 1992 and has never had a security violation. Neither Applicant nor any of his family has ever worked for or had dealings with the Palestinian Authority or the Government of Israel. Applicant demonstrated a knowledge of proper response to any exerted pressure being applied to him (Tr. 88).

Applicant is highly regarded for his work ethic and loyalty to the U.S. by his company in their evaluations (Exh. B), and by three fellow workers who hold security clearances and have each worked with him for twenty years. He has recently been nominated for an achievement award for specific accomplishments for his company (Tr. 19-43).

Applicant is a homeowner and all his investments are in the U.S. in the form of his home and 401K savings with total valuation of \$750,000.00. Applicant is married with seven children the eldest of whom is in college in the U.S. and the youngest is three. All live in the U.S. The older children are fluent in Arabic from having resided with their grandparents. Applicant hopes that they might be of service to the U.S. as translators.

Israel and the areas of the West Bank and Gaza are politically volatile and dangerous places to live (Exhs. I, IV, V, and VI). Applicant's family lived there for several years but there is no evidence that they had any relations with governmental authorities there or organizations that sponsor terrorism. The purpose for their residence was family related.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly

consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Based on the evidence of record, including Applicant's acknowledgment of family members living abroad, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Mitigating conditions (MC) that might be applicable are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and that contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.)

While Applicant has several relatives living in Palestine including especially his father, all except his mother-in-law are U.S. citizens and all of them travel with great frequency to the U.S. where children and many more family members are resident. While his frequent travels to Palestine raised security concerns, all occurred while his wife and children were residing with his parents over an extended period for justifiable family medical concerns, and he has not traveled there since 2001 when those factors ceased to exist.

Applicant's gifts to his father are not significant and his father is not reliant on him for support. His one trip to Jordan was adequately explained.

His reputation in his company and the support of his peers as well as his conduct in the security arena and stated knowledge of how to respond to pressure leads me to the conclusion that security concerns have been mitigated. During the period he has held a security clearance, he has followed all required procedures and understands what is expected of him. Those actions over such an extended period speak volumes in appraising his security worthiness. Applicant's record successfully rebuts any security concerns.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant presents a highly credible case that he would not be influenced by anything anyone might seek him to do any acts contrary to the best interests of the U.S. His strong ties the U.S. contrasted with his minimal ties to Palestine, his residence in the U.S. for almost 30 years, his extensive family connections in the U.S., and his career record as a trusted employee of a major U.S. corporation effectively refutes the likelihood that he would now, at this time in his life, take any action that would jeopardize U.S. security interests.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant **DECISION**

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge