

DATE: September 20, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24238

## **DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a dual citizen of Jordan and the United States, used a Jordanian passport to travel to Syria in May 2001. His father, and, on occasion, mother reside in the United Arab Emirates, and his brother in Jordan. Although he has applied to surrender his Jordanian passport, there is no evidence he has actually done so. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 2, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). Applicant submitted a response to the SOR that was received by DOHA on January 18, 2005, requested a hearing, and admitted all SOR allegations except subparagraphs 1.e., 2.c., and 2.h.

The case was assigned to another administrative judge on April 4, 2005, and reassigned to me on May 20, 2005, due to caseload considerations. A notice of hearing was issued on May 27, 2005, scheduling the hearing for June 16, 2005. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7. GE 1 and 2 were admitted into the record and administrative notice was taken of GE 3-7 without objection. Applicant testified and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3, and admitted into the record without objection.

The record was held open to allow both parties time to submit additional documentation in support of their respective cases. Department Counsel submitted two additional documents that were marked as GE 8 and 9. Administrative notice was taken of both documents without objection. Applicant submitted two additional documents that were marked as AE 4 and 5, and admitted into the record without objection. The transcript was received by DOHA on June 24, 2005.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 39-year-old single man who has been employed by a defense contractor as a configuration engineer since January 2003. He previously worked for a different defense contractor as an engineer from May 2000 until January 2003, and a third defense contractor as a scientist from June 1997 until May 2000. Before his employment by defense contractors, Applicant worked as a research assistant at a major state university while pursuing his doctorate degree, which he obtained in aerospace engineering in August 1999.

Applicant was born in Kuwait in 1966. His parents were Jordanian citizens and residing in Kuwait at the time because of his father's employment. Applicant is a Jordanian citizen by virtue of his birth to Jordanian citizens. Applicant was raised in Kuwait, and came to the United States in 1983 to attend a state university. His parents and siblings immigrated to the U.S. in 1987, and, Applicant therefore decided to remain in this country. Applicant became a naturalized U.S. citizen in May 1997. His parents, brother, and three sisters all became naturalized U.S. citizens between November 1994 and November 1996.

Applicant's father is 69 years old, has dual citizenship with Jordan and the U.S., and resides in the United Arab Emirates (UAE). Applicant's mother is 66 years old, has dual citizenship with Jordan and the U.S., and divides her residence between the UAE and the U.S. Applicant's brother is 34 years old, has dual citizenship with Jordan and the U.S., and resides in Jordan. Applicant's three sisters are 27, 36, and 37 years old, are all dual citizens of Jordan and the U.S., and all reside in the U.S.

Applicant's father owns a concrete construction business headquartered in the UAE with an office in Jordan. The father manages the UAE office, and Applicant's brother manages the Jordanian office. The business operates throughout the Middle East, South Asia, India and Europe, with substantial sales in or from Saudi Arabia, the UAE, and Jordan, and to a lesser extent Syria and Egypt. UAE regulations require Applicant's father to have a UAE citizen, at least in name, as a part owner of the business.

Applicant visited Jordan in July 1996, December 1999, August 2000, May 2001, August 2001, December 2001, December 2003, and October 2004. He visited Israel and the West Bank during his December 1999 trip to Jordan; Syria during his May 2001 trip to Jordan; and the UAE during the October 2004 trip. Applicant testified his multiple trips to Jordan in 2001 were to meet with the woman to whom he was engaged at the time and who was a citizen of Qatar. Applicant stays in the family home owned by his father while visiting in Jordan.

Applicant speaks with his father at least once a month by telephone, visits with him when he travels to the region, and the father visits in the U.S. annually. Applicant visits with his mother weekly when she is residing in the U.S., and speaks with her by telephone one or two times a week when she is residing in the UAE. Applicant's brother visits in the U.S. annually, and they maintain regular contact when he is residing in Jordan. Two of Applicant's sisters live together in a house he owns that is not too far distant from Applicant's residence. Applicant's mother resides in that home when she is living in the U.S., and Applicant visits with them most weekends. Applicant's third sister lives in a distant city.

Applicant has aunts, uncles, cousins, and friends who reside in Jordan and a cousin who resides in the West Bank. With the exception of one uncle, who Applicant speaks with a couple of times each year, and who works for Applicant's father, Applicant has very limited contact with these relatives consisting primarily of sporadic visits with some of them when he visits the region.

Applicant obtained a U.S. passport in September 1999. However, while visiting Jordan in August 2001, he renewed his then expired Jordanian passport to use it for his travel to Syria that would have required issuance of a visa if he had used his U.S. passport. At the hearing, Applicant submitted a letter dated June 15, 2005, addressed to the Jordanian Embassy, in which he indicated he wanted to surrender his Jordanian passport. (AE 2) However, Applicant testified he had not actually mailed the letter.

Following the hearing, Applicant submitted a letter from the Jordanian Embassy, dated June 20, 2005, indicating he had begun the process of "giving in" his Jordanian passport and that his application was being processed. (AE 5) Applicant

also sent a letter addressed to Department Counsel, dated June 28, 2005, in which he wrote: "I will notify you as soon as the process has been completed and I have surrendered my Jordanian passport." (AE 4) As of today, no further correspondence has been submitted for inclusion in the record that would indicate Applicant has actually surrendered the Jordanian passport.

Applicant estimates the house he owns and in which his sisters live is valued at about \$400,000.00. He values his 401(k) and bank accounts combined from \$11-12,000.00. Applicant does not own any foreign property, and indicated he has no interest in the family's overseas business and intends to let his brother have whatever foreign investment he might stand to inherit when their parents die.

Applicant provided a statement to a Special Agent for the Defense Security Service on September 20, 2003, in which he indicated he had not decided whether or not he would be willing to renounce his Jordanian citizenship because, by retaining that citizenship, he was keeping options open. (GE 2) Specifically, retaining the Jordanian citizenship might facilitate a change in careers or a move to the Middle East if he decided on such a course. At the hearing, Applicant testified he had discussed the possibility of renouncing his Jordanian citizenship with his family, and he was more receptive to the idea, but that he had decided to take the easier route of surrendering his Jordanian passport because it was a costly and protracted process to renounce citizenship.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline C, pertaining to foreign preference, with their respective DC and MC, are most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

### **CONCLUSIONS**

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.

Based upon the allegations in the SOR, Disqualifying Condition 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* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B.

DC 1 applies because Applicant's immediate relatives are dual citizens of Jordan and the U.S. His father is a resident of the UAE, his brother is a resident of Jordan, and his mother divides her residence between the UAE and the U.S. Further, Applicant's father owns a construction business that does business throughout a substantial portion of the Middle East, South Asia, India, and Europe. His father manages the UAE office, his brother manages the Jordanian office, and his father has a partner who is a citizen of the UAE.

Once the government meets its burden of proving controverted facts<sup>(12)</sup> the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.<sup>(13)</sup> Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an administrative judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>(14)</sup>

The following information about Jordan, the UAE, and Syria are significant in determining whether a security concern exists under the known facts in this case:

The events of September 11, 2001 serve as a reminder of the continuing threat from transnational terrorists and extremist groups to Americans and American interests worldwide, and specifically in Jordan, where a U.S. diplomat was assassinated in October 2002.

Recent worldwide terrorist alerts have stated that extremist groups continue to plan terrorist attacks against U.S. interests in the region.

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Since late 1999, there has been a series of serious, confirmed terrorist threats and disrupted terrorist plots targeting U.S. interests in Jordan. In April 2004, Jordanian authorities disrupted a plan to attack the U.S. Embassy and Jordanian leadership sites with explosive-laden vehicles. Anti-Western sentiment, though less pronounced since the end of the Gulf War, has been sparked by incidents within the region, particularly those related to Israeli/Palestinian issues and, to a lesser extent, Iraq.<sup>(15)</sup>

Americans in the United Arab Emirates should exercise a high level of security awareness. The Department of State remains concerned about the possibility of terrorist attacks against U.S. citizens and interests throughout the world. Americans should maintain a low profile, vary routes and times for all required travel, and treat mail and packages from unfamiliar sources with caution.<sup>(16)</sup>

Syria is included on the Department of State's List of State Sponsors of Terrorism. A number of terrorist groups present in Syria oppose U.S. policies in the Middle East. . . . A 1997 bombing of a public bus in downtown Damascus, which killed 22 people, and the 1998 and 2000 mob attacks against the U.S. Embassy serve as reminders that Syria is not immune from political violence. Americans traveling through the area should remain aware that U.S. interests and citizens might be targeted.<sup>(17)</sup>

Applicant's father, brother, and, on occasion, his mother reside in Jordan and the UAE. They own substantial assets and conduct business in those countries, and do business in Syria, Saudi Arabia, and other countries throughout that area of the world. Further, those relatives are themselves U.S. citizens, thereby substantially increasing their potential for being targeted by terrorist groups. Finally, Applicant himself travels frequently into and around the region, including countries known to harbor terrorists. The potential for coercion, exploitation, or pressure being exerted on Applicant directly and through his foreign relatives and their substantial foreign investments is obvious. I have considered all potential mitigating conditions and none apply. Guideline B is decided against Applicant.

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.

Disqualifying Condition (DC) 1: *The exercise of dual citizenship* and DC 2: *Possession and/or use of a foreign passport* are acts that demonstrate a foreign preference. Applicant is a dual citizen of the U.S. and Jordan, and has exercised his Jordanian citizenship by obtaining and using a Jordanian passport to enter Syria after he became a U.S. citizen. Although he now expresses a somewhat reluctant willingness to renounce his Jordanian citizenship, his statement to a Special Agent from the Defense Security Service in September 2003 that he was hesitant to do so because he wanted to keep his options open provides a substantial basis for concern about his future intentions.

Additionally, while Applicant has submitted information indicating he has taken preliminary steps toward surrendering his Jordanian passport, and despite being provided with a copy of the ASD(C3I) Memorandum, dated August 16, 2000 (the Money memo),<sup>(18)</sup> he has not provided any evidence to conclude he has actually surrendered the passport. The Money memo mandates that, "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States government." Applicant has done neither of these mitigating acts, and, thus, has failed to mitigate the security concern caused by his acquisition, use, and retention of his Jordanian passport. He has failed to mitigate the foreign preference security concern, and Guideline C is decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline C: Against Applicant

Subparagraphs a-e: Against Applicant

SOR ¶ 2-Guideline B: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: For Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against 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 Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Directive, Additional Procedural Guidance, Item E3.1.14
13. Directive, Additional Procedural Guidance, Item E3.1.15
14. ISCR Case No. 99-0597 (December 13, 2000)
15. U.S. Department of State, Consular Information Sheet, Jordan, March 30, 2005.
16. U.S. Department of State, Consular Information Sheet, United Arab Emirates, June 17, 2005.
17. U.S. Department of State, Consular Information Sheet, Syria, March 30, 2005
18. GE 7