

DATE: September 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30878

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Robert Coacher, Esquire, Department Counsel

FOR APPLICANT

August Bequai, Esquire

SYNOPSIS

Applicant mitigated the security concerns by demonstrating that his family members living in Jordan were not agents of a foreign government or so situated as to provide a point of influence on Applicant. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 18 December 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence, foreign preference, and personal conduct. [\(U\)](#) Applicant answered the SOR on 29 January 2004 and requested a hearing. DOHA assigned the case to me 8 October 2004 and I convened a hearing on 14 January 2005. DOHA received the transcript 24 January 2005.

RULINGS ON PROCEDURE

At the hearing (Tr. 23-29) I excluded GE 5 under paragraph E3.1.22 of the Directive, effectively precluding the government from establishing its case on subparagraph 1.f. and 3.a. Accordingly, I enter findings for the Applicant on those two allegations.

FINDINGS OF FACT

Applicant admitted the factual allegations under Guideline B, but denied the allegations under Guidelines C and E; accordingly I incorporate those admission as findings of fact. He is a 39-year-old technical staffer for by a defense contractor, so employed since January 1994. He seeks to retain the clearance he has held since approximately April 1990.

Applicant was born in the Jordan in February 1965, and immigrated to the U.S. in August 1982. In so doing, he avoided two-years mandatory military service required of all Jordanians age 18 and older. He became a naturalized U.S. citizen

in June 1988. He got his first U.S. passport the same month; he renewed his U.S. passport in March 1999.

When Applicant immigrated to the U.S. in August 1982, he did so using a Jordanian passport issued in July 1982. That passport expired in July 1985. He did not use it to travel before becoming a U.S. citizen, or renew it when it expired. He did not travel out of the U.S. until becoming a citizen, and has used only his U.S. passport to travel.

Applicant has two brothers who are naturalized citizens and residents of the U.S. He has five siblings (two brothers/three sisters) who are citizens and residents of Lebanon. None work for the government. Two of his sisters are housewives. His other sister and two brothers are employed in the private sector.

Applicant's mother is a Jordanian citizen who is a legal permanent resident of the U.S. and resides in the U.S. most of the year. However, she typically travels to Jordan 3-4 months per year to visit her children and grandchildren there. When she does so, Applicant and his two brothers living in the U.S. give her money to handle her expenses in Jordan, including rent. Applicant's contribution is about \$100.00 per month.

Since coming to the U.S. in 1982, Applicant has traveled to Jordan four times. He traveled there in June 1992 to visit family and become engaged. He returned to Jordan in July 1993 to marry and visit family. He returned in August 1995 to visit family. He and his wife traveled to Jordan in December 2000 to adopt an infant who had been abandoned at birth.

When Applicant traveled to Jordan in 1992, 1993, 1995, he registered with the Jordanian equivalent of the selective service system. Doing so permitted him to leave Jordan without satisfying the mandatory military service requirement, and postponed that service while out of the country until age 37, ⁽²⁾ at which time it expires entirely. Applicant is not willing to serve in the Jordanian military and keeping his registration up to date permits him to avoid that service. He is willing to renounce his Jordanian citizenship, but the process is complicated and would require him to satisfy the military service requirement before renouncing his citizenship. Applicant is willing to bear arms for the U.S., even against Jordan, and has registered with the selective service system as required by U.S. law.

Applicant and his wife, who became a naturalized U.S. citizen in 1999, have two children, a daughter born in the U.S. and their adopted son, who has derivative U.S. citizenship. They have heavily invested in the American way of life (AE B).

Applicant's character references, both at and outside work, consider him a reliable and trustworthy person. He has an excellent work record and his employer recommends him for a clearance. He has adequately safeguarded company proprietary information. (AE A).

Jordan is a constitutional monarchy with a mixed human rights record, but is not invasively involved in monitoring its citizens. Jordan maintains close relations with the U.S. Jordan is not known to be a collector of intelligence or economic information against the U.S.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence), Guideline C (Foreign Preference) and Guideline E (Personal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an

Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽³⁾

CONCLUSIONS

The government established a case for disqualification under Guideline B by demonstrating that Applicant's five siblings are citizens and residents of Jordan, as is his mother part of the year.⁽⁴⁾ His travel to Jordan to visit family, and his support for his mother when she visits there, demonstrate that his contacts are more than casual, but otherwise lack independent security significance.

However, Applicant has met the relevant mitigating condition under foreign influence. Neither his mother nor his siblings are agents of a foreign government, and none of them are so situated as to provide a point of influence on Applicant, thus satisfying Mitigating Condition (MC) 1.⁽⁵⁾ In particular, Jordan has a constitutional monarchy with a close relationship to the U.S. It does not collect U.S. economic or intelligence information. I resolve Guideline B for Applicant.

The government did not establish a Guideline C case. Applicant's dual citizenship is based solely on his birth in Jordan. He has not exercised his Jordanian citizenship since becoming a U.S. citizen. He has complied with Jordanian law by registering for military service, but as a means of obtaining the exemption from military service available to Jordanian citizens. Under these circumstances I do not consider his action an exercise of dual citizenship. Such registration does not constitute military service or a willingness to bear arms for Jordan. Indeed, Applicant has disavowed any willingness to bear arms for Jordan and has expressed his willingness to renounce his Jordanian citizenship, which, ironically, he can only do if he completes his military service obligation. I resolve Guideline C for Applicant.

The government did not establish a Guideline E case, as indicated in my procedural ruling above. I conclude Guideline E for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Paragraph 2. Guideline C: FOR THE APPLICANT

Subparagraph a: For the Applicant

Paragraph 3. Guideline E: FOR THE APPLICANT

Subparagraph a: 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. Clearance granted.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant had variously stated his belief that the registration requirement ran until age 40 or 45. However, the current U.S. Department of State Consular Information Sheet for Jordan states the registration requirement runs only to age 37.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. 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;
5. 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 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.