

DATE: December 14, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-06173

**ECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Jr., Esq., Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is 52 years old, married with three children, and is a program director in the air navigation business for a defense contractor. He has had a security clearance for 20 years as he has worked all over the world for his employer installing and maintaining these systems. Applicant has 11 siblings and in-laws, most of whom have moved to the U.S. and become citizens or resident aliens. The others are citizens of countries friendly to the U.S. None of his relatives have ever worked for a foreign government. Applicant mitigated the foreign influence security concerns. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 8, 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on February 5, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on June 24, 2004. On July 2, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. Applicant waived the 15 day notice period (Tr. 8). DOHA received the hearing transcript (Tr.) on July 14, 2004.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 52 years old, married, and has three children. He lives in the United States, where he has been a naturalized

citizen since 1982. His wife is a naturalized U.S. citizen. He was born in Iraq. His father was a Kurd (now deceased), and his mother was born in Kuwait, but is a U.S. citizen now living in the United States. He works for a defense contractor as an air navigation systems program director, setting up air navigation systems around the world. Applicant owns his home in the United States, has no foreign property or bank accounts, and has had a security clearance since 1984 with no security problems. Applicant is loyal to the United States. (Tr. 10, 17, 19, 20, 29 to 40; Exhibits 1 and 2)

Applicant has a brother who is a citizen and resident of Bahrain. He operates a mechanics shop there. This brother has never worked for any government. (Tr. 18, 24, 25; Exhibits 1 and 2)

Applicant has another brother who resides in Kuwait, works in a computer store, and is a citizen of Australia. He has never worked for any government. (Tr. 18, 25; Exhibits 1 and 2)

Applicant's third brother is a citizen of Iraq and resides in the United Arab Emirates. He works as a taxi driver, and has never worked for a foreign government. (Tr. 18, 25, 26; Exhibits 1 and 2)

Applicant's two brothers listed in subparagraph 1.d. of the SOR are citizens of the United States and residents of the U.S. They both obtained their citizenship in 2004. (Tr. 18; Exhibits 1 and 2)

Applicant's sister is a housewife who resides in Kuwait with her family. She is a citizen of Kuwait. (Tr. 20, 31; Exhibits 1 and 2)

Another of Applicant's sisters is a physician in Bahrain. She is also a citizen of Bahrain. (Tr. 20, 32; Exhibits 1 and 2)

Applicant's wife's two sisters are U.S. citizens and live in the U.S. with their husbands. Their husbands have U.S. alien registrations as of 2004. (Tr. 20, 32)

The brother-in-law cited in subparagraph 1.h. of the SOR no longer lives in Jordan. He now lives with his family in the United States and has an alien registration card. He works in a restaurant. (Tr. 21, 33)

Applicant's two sisters-in-law referred to in subparagraph 1.i. of the SOR as living in Jordan and being citizens of Jordan are now residing in the United States and have alien registration cards. They moved to the United States in 2004. (Tr. 21)

Applicant has an uncle who has been business since the 1960s. He is now retired. He owns real estate in the United States, and spends part of his time in the U.S. and the remainder of each year in Kuwait. (Tr. 22)

Applicant visited family members on his business trips for his company while traveling to Kuwait in 2000 and 2001, in Jordan in 1999, and in Bahrain in 1996. Applicant travels extensively for his company as a program director in his area of expertise. He currently works in Bagdad, Iraq, implementing a contract with the Iraq government under the auspices of the U.S. Embassy there helping in the Iraq rebuilding effort. (Tr. 29, 37, 40)

Applicant explained that his family members are so numerous he cannot keep track of their jobs, children, or how they change over the years. As a member of the Kurdish minority in Iraq under the former government in the 1950s to the present, Applicant and his siblings all sought citizenship of other countries to escape Iraq, with the goal of eventually coming to the United States and becoming U.S. citizens. Applicant's parents became U. S. citizens, and this year seven siblings or brothers-in-law became U.S. citizens or resident aliens in the U.S. (Tr. 17, 23 to 25)

## 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. The President has restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **GUIDELINE B: Foreign Influence**

The Concern: 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. Directive, ¶ E2.A2.1.1.

Conditions 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 or present in, a foreign country. Directive, ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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. Directive, ¶ E2.A2.1.3.1.

### **CONCLUSIONS**

Regarding Guideline B security concerns, the Government established its case. Applicant has relatives who are foreign citizens of Persian Gulf countries and who reside in those countries. Disqualifying Condition (DC) 1 applies.

The Applicant showed that his siblings who are not already U.S. citizens are moving to the U.S. as the immigration laws allow them to do so, and they seek, and in two instances in 2004, obtained U.S. citizenship. Applicant's wife's sisters have moved to the U.S. and become resident aliens with the intention of becoming U.S. citizens. Those of Applicant's siblings who remain foreign residents and citizens have private sector jobs in those countries and their wives are from those countries. None of Applicant's family members have worked for a foreign government. The countries in which the two brothers and two sisters, and the uncle, have citizenship are friendly to the United States and are considered allies, in particular Australia. Applicant showed that these relatives over the past 20 years he has worked for his employer and had a security clearance have never been exploited to force him to betray his loyalty to the U.S. Applicant's loyalty statement at the hearing was credible, and based on his 20 year record, very persuasive. Mitigating Condition (MC) 1 applies. For these reasons, and upon application of the standards set forth in ¶ E2.2 of the Directive, I conclude this guideline for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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 (Directive).