

DATE: January 11, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08828

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Robert R. Sparks Jr., Esq.

SYNOPSIS

At the request of her mother, Applicant, a native-born U.S. citizen, sponsored the immigration of her father and his family to the U.S. Her father and his family are now dual U.S.-Jordanian citizens. Currently, Applicant's father is in Jordan. 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 23 August 2004, DOHA issued a Statement of Reasons [\(1\)](#) (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 7 September 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 28 October 2004. On 15 December 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. DOHA received the hearing transcript (Tr.) on 21 December 2004.

FINDINGS OF FACT

Applicant is a 35-year-old information technology specialist for a defense contractor.

Applicant's mother, EE, was born and raised in the U.S. as a Jew. In 1966, EE married a Jordanian and resided in Jordan. In 1969, after she became pregnant with Applicant, EE decided to return to the U.S. for Applicant's birth. EE never returned to the Middle East. EE and Applicant's father, who was a Ph. D. candidate at a U.S. university, separated in 1973 and ultimately divorced. Applicant had little contact with her father thereafter. He did not provide child support and played no part in her upbringing. Applicant's mother raised Applicant while working as a corporate compliance manager for a defense contractor. She held a top secret security clearance for two years. In 1980, EE married a retired U.S. Air Force officer with service in both the Korean and Vietnam wars. He is employed as an inspector in a federal

agency.

Applicant's father was and is an archeologist and professor who taught at a university in Jordan, but had ties to museums and universities in the U.S. where he would lecture and teach. On rare occasions he visited Applicant.

In approximately 1982, Applicant visited Jordan for three weeks as a tourist. She stayed with her father and his family--his second wife and their two children. During Applicant's stay in Jordan, it became known to some of Applicant's father's friends and colleagues that she was Jewish. After the Gulf War in 1991, Applicant's father was questioned by friends and colleagues about having been married to a Jew, Applicant's mother. EE asked Applicant to sponsor her father and his family into the U.S. She did so. But Applicant never participated in the citizenship interviews and did not attend her father's swearing in. She remains in contact with her father, mostly by e-mail on a monthly basis. She considers her step-father to be her parent as he helped raise and support her through her formative years.

Applicant's father travels to Jordan twice a year for a month at a time to teach and do archeological research. He suffered a heart attack a short time ago while he was working in Jordan. He has remained in Jordan for treatment. Applicant's father and his family are dual U.S.-Jordanian citizens. Applicant's half-brother is a chemical engineer and her half-sister is a physician. Applicant's half-sister recently gave birth to a child who was born in the U.S.

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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant's father, step-mother, half-brother and half-sister are dual citizens of Jordan and the U.S. currently residing in the U.S. (¶ 1.a) and her father travels to Jordan once or twice a year for about a month at a time (¶ 1.b). A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. 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.

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B--Applicant's father, stepmother, half-brother, and half-sister are citizens of Jordan, and Applicant's father is present in Jordan.

This is not the typical foreign influence case. In this case, the "foreign associates" are actually U.S. citizens who reside in the U.S. While their dual citizenship makes them "citizens of a foreign country," I doubt the drafters of the Directive meant to include such dual citizenship, on its own, as raising a security concern. After all, a security concern is raised by an applicant with dual citizenship only if the applicant exercises that dual citizenship. *See* Guideline C--Foreign Preference DC E2.A3.1.2.1. There is no evidence Applicant's father, stepmother, half-sister, or half-brother exercised their dual citizenship.

Even if being a dual citizen is sufficient to raise a foreign influence security concern, such concerns may be mitigated when it is determined the person is not an agent 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 loyalty to the U.S. MC E2.A2.1.3.1. Applicant's foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b). And, accept for her father, who is present in Jordan and travels to Jordan twice a year, are not in a position to be exploited by a foreign power.

The real issue here is the presence of Applicant's father in Jordan now, and his routine trips there twice a year. Applicant contends her "contact and correspondence" with her father and the rest of his family is "casual and infrequent." *See* MC E2.A2.1.3.3. There is a presumption that an applicant's association with members of her own family are not casual and infrequent. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant successfully rebutted that presumption. Although Applicant acknowledges her father, and sponsored him and his family in becoming U.S. citizens, it was at her mother's request. Applicant does not have the depth of attachment or obligation to her father or his family that represents a security concern. I find 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

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.

James A. Young

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).