

DATE: June 30, 2006

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 03-11017

**ECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Michael Lyles, Esquire, Department Counsel

James B. Norman, Esquire, Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's application for, renewal of, and use of a foreign passport after becoming a naturalized U.S. citizen demonstrated foreign preference which was not mitigated since Applicant had neither surrendered the passport nor obtained formal approval for its use. However, Applicant mitigated the foreign influence concerns raised by his family members residing in the middle east by demonstrating that none of them were agents of a foreign government or otherwise situated to be a source of pressure or influence on Applicant. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 23 September 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign preference and foreign influence [\(1\)](#) He answered the SOR 11 October 2004, and requested a hearing. DOHA. DOHA assigned the case to me 29 March 2006, and I convened a hearing on 19 April 2006. DOHA received the transcript 3 May 2006.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR. Accordingly, I incorporate those admissions as findings of fact.

Applicant--a 35-year-old network engineer employed by a defense contractor since June 1995--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Jordan in July 1970. He immigrated to the U.S. in 1987 and became a naturalized U.S. citizen in September 1993. He obtained his U.S. passport in November 1993. He renewed his U.S. passport in March 2002.

In October 1998, Applicant traveled to Israel to marry his wife, a Jordanian national who has lived all her life in

Jerusalem. He traveled to Israel on his U.S. passport. In 1999, Applicant was completing the required process for his wife to immigrate to the U.S. In order to do so, she required a valid Jordanian passport. However, under Jordanian law, as a married woman, she could not apply for the passport without her husband's permission. When working with the Jordanian Embassy, Applicant discovered that they would not let him complete the required paperwork for his wife's passport without renewing his Jordanian passport. Applicant renewed his Jordanian passport, and his wife obtained her Jordanian passport and immigrated to the U.S. Applicant used his Jordanian passport to travel to Jordan in 2002. He has since let the passport expire, and has no intent to renew it. However, he has taken the expired with him on trips to Jordan since then "to be safe."

Applicant's wife travels to Jordan every three years to maintain her Jordanian citizenship and retain her right to live in Jerusalem. She has not applied for U.S. citizenship because she wants to be able to return to Israel if the marriage does not work out. All her family lives in Israel.

Applicant's sister is a Jordanian citizen, who resided in Israel, but now resides in the U.S. Applicant does not know if she will remain in the U.S. His in-laws (parents and siblings) are all Jordanian citizens residing in Israel. He is not especially close to them. None of these relatives have any association with the Jordanian or Israeli governments.

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., and is not known to be a collector of intelligence or economic information against the U.S. Israel is a democracy and an ally of the U.S. However, it is a known collector of economic and intelligence information against the U.S.

## **POLICIES AND BURDEN OF PROOF**

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 C (Foreign Preference) and Guideline B (Foreign Influence) .

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.<sup>(2)</sup>

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C<sup>3</sup>I) issued a memorandum<sup>(3)</sup> to clarify the application of Guideline C, Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C<sup>3</sup>I memorandum **"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."** (Emphasis added).

## CONCLUSIONS

The government established a case for disqualification under Guideline C case by showing that Applicant obtained a Jordanian passport in October 1999, using it to obtain his wife's Jordanian passport, and used it himself to travel to Jordan in 2002. He takes his now-expired Jordanian passport with him when he travels to Jordan as a safety precaution. This despite becoming a U.S. citizen in September 1993. This conduct implicates disqualifying conditions (DC) 1 and 2, (4) and Applicant has not mitigated the security concerns. Although he has been a dual citizen of Jordan and the United States since his naturalization in September 1993, his Jordanian citizenship would possess little security significance if based solely on his birth in Jordan. For his conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

None of the mitigating conditions (MC) apply. MC 1 does not apply because Applicant's dual citizenship is not based solely on his birth in Jordan, but is based on his active exercise of dual citizenship after obtaining U.S. citizenship. MC 2 does not apply because all indicators of possible dual citizenship have occurred since Applicant obtained U.S. citizenship. MC 3 does not apply because Applicant's conduct has not been sanctioned by the U.S. MC 4 does not apply because Applicant has not expressed a willingness to renounce his foreign citizenship.

The ASD, C<sup>3</sup>I Memorandum effectively controls the resolution of the foreign preference issue. The memorandum provides that Applicant's past possession and use of his foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has undertaken neither action. Further, the Appeal Board has ruled that possession of an expired passport does not satisfy the Money Memo requirement for surrender of the passport. *See*, DISCR Case No. 01-24306, September 30, 2003. In addition, Applicant seems likely to use his expired Jordanian passport in much the same fashion as he has since it expired, as a safety precaution. While Applicant has a legal right to maintain his dual citizenship with its attendant benefits and responsibilities, he has not demonstrated that he can be counted on to always act in preference to the United States. I resolve Guideline C against Applicant.

The government also established a potential case for disqualification under Guideline B by showing that Applicant's sister and in-laws were Jordanian citizens residing in Israel. (5) His travel to Jordan and Israel demonstrate close ties of affection. However, Applicant has mitigated the security concerns raised by his relatives living in Israel. His sister is now residing in the U.S. and as a Jordanian citizen is an unlikely target for Israel. Applicant is not close to his in-laws, they are not agents of a foreign government, and are not so situated as to provide a point of influence on him. (6) I resolve Guideline B for Applicant.

### FORMAL FINDINGS

#### Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

#### Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For 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 denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. The so-called "Money Memo" because it was signed by Arthur L. Money.
4. E2.A3.1.2.1. The exercise of dual citizenship; E2.A3.1.2.2. Possession and/or use of a foreign passport;
5. 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;
6. 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.