

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant has dual U.S. and Saudi Arabian citizenship. Applicant has passports issued by both countries. Applicant does not want to renounce his Saudi Arabian citizenship nor surrender his Saudi Arabian passport, in accordance with the "Money Memo". Applicant lives in Saudi Arabia with his parents, his wife and child. Applicant's father is a Saudi Arabian citizen, and Applicant's mother is a U.S. citizen living in Saudi Arabia. Applicant has not mitigated the foreign preference and foreign influence security concerns. Applicant has not complied with the passport surrender requirements of the "Money Memo". Clearance is denied.

CASENO: 03-12416.h1

DATE: 09/30/2004

DATE: September 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12416

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has dual U.S. and Saudi Arabian citizenship. Applicant has passports issued by both countries. Applicant does not want to renounce his Saudi Arabian citizenship nor surrender his Saudi Arabian passport, in accordance with the "Money Memo". Applicant lives in Saudi Arabia with his parents, his wife and child. Applicant's father is a Saudi Arabian citizen, and Applicant's mother is a U.S. citizen living in Saudi Arabia. Applicant has not mitigated the foreign preference and foreign influence security concerns. Applicant has not complied with the passport surrender requirements of the "Money Memo". Clearance is denied.

STATEMENT OF THE CASE

On March 15, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guidelines C (Foreign Preference) and B (Foreign Influence) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

On April 24, 2004, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing. On June 24, 2004, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on August 21, 2004. The case was assigned to me on September 13, 2004.

FINDINGS OF FACT

Applicant admitted the allegations in all subparagraphs of the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 22 years old, married, with an 11-month-old daughter. Applicant did not disclose any information concerning his wife's or daughter's citizenship, or his wife's employment, if any. He is enrolled in college and works for a defense contractor in Saudi Arabia. Applicant has dual United States and Saudi Arabian citizenship. His mother is a U.S. citizen born in the U.S. who lives in Saudi Arabia. His father is a citizen and resident of Saudi Arabia. Applicant moved to Saudi Arabia with his parents in 1986. Applicant was born in the United States. (Items 2 and 4; Response)

Applicant has a U.S. passport and a Saudi Arabian passport. The Saudi Arabian passport was issued May 26, 2001, and expires on May 26, 2006. Applicant is reluctant to renounce his Saudi Arabian citizenship while living in Saudi Arabian because he is uncertain as to what events will follow the renunciation, possibly including deportation and an inability to reenter Saudi Arabia to visit his parents. Applicant is also concerned about pressure on his family by the Saudi Arabian government if he renounces his citizenship there. These concerns were expressed by Applicant in his answer of October 13, 2003, and sworn to November 22, 2003, to interrogatories sent him by the U.S. government. In an earlier statement, Applicant said he would renounce his Saudi Arabian citizenship if he could keep his defense contractor employment. In the October 2003 answer to the interrogatories Applicant asked for permission to retain his Saudi Arabian passport. (Items 2, 4 to 6; Response to FORM)

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* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted 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 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (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., 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.

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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. 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:

None

GUIDELINE C: Foreign Preference:

The Concern: 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. Directive ¶ E2.A3 .1.1.

Conditions that could raise a security concern and may be disqualifying include:

The exercise of dual citizenship. ¶ E2.A3.1.2.1.

Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

E2.A3.1.3. Conditions that could mitigate security concerns include:

None

Applicable also is the Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo". This memorandum guidance states that

possession and/or use of a foreign passport may be a disqualifying condition. . . The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raised doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Guideline B - Foreign Influence: Disqualifying Conditions (DC) 1 (An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen or, or resident or present in, a foreign country). The Government presented sufficient evidence to establish its allegations. Applicant and his father are citizens of Saudi Arabia and live there. His mother is a U.S. citizen and lives in Saudi Arabia. Applicant's wife and daughter live in Saudi Arabia. Applicant works in Saudi Arabia for a U.S. defense contractor.

I find Mitigating Condition (MC) 1 (the immediate family members are not agents of a foreign power or in a position to be exploited) not applicable here. The burden is on the Applicant to demonstrate by relevant and probative evidence that his family members are not agents of a foreign government, and are not in a position to be exploited by a foreign power in a way which would place Applicant in a position of having to choose between loyalty to his family members and loyalty to the U.S. Applicant may be in a position at some time of vulnerability to be influenced by coercive or

noncoercive means because of his family and himself living in Saudi Arabia. There are no MCs applicable here. I find against Applicant on this Guideline.

Guideline C - Foreign Preference: The Government met its burden and established the facts by substantial evidence. Individuals who act in ways that indicate preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States. (Directive ¶ E2.A3.1.1.) Applicant cannot have a foreign preference and a U.S. security clearance. Applicant has a Saudi Arabian passport in addition to his U.S. passport. The fact remains that he has not surrendered the passport as the "Money Memo" requires for the issuance of a clearance. By obtaining a Saudi Arabian passport, Applicant has exercised dual citizenship. Therefore, DC 1 and DC 2 apply.

Applicant must now meet his burden to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). Applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance. *Id.* Although Applicant opines in his Answer that all the MC should apply to him, I conclude Applicant has failed to meet his burden and none apply to him. He has not overcome the requirements of the ASDC3I memorandum which reiterates that the failure to surrender the foreign passport is a disqualifying condition. Applicant's Saudi Arabian passport is valid until May 26, 2006. He has taken no steps to surrender it and has expressed his desire not to surrender it. Therefore, I find against Applicant on this guideline.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2 Guideline B: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. The Government submitted seven items in support of the SOR.