

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a U.S. citizen by birth. In 1999, while possessing a valid U.S. passport, Applicant acquired and used a Palestine passport travel document to enter and reside in the West Bank. Applicant deliberately falsified his security clearance application and his signed sworn statements to special agents of the Defense Security Service by failing to disclose he had received a non-judicial punishment in 1999. Applicant failed to mitigate security concerns under Guidelines B, C, E, and J of the Directive. Clearance is denied.

CASENO: 03-30369.h1

DATE: 02/27/2006

DATE: February 27, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30369

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

August Bequai, Esq.

**SYNOPSIS**

Applicant is a U.S. citizen by birth. In 1999, while possessing a valid U.S. passport, Applicant acquired and used a Palestine passport travel document to enter and reside in the West Bank. Applicant deliberately falsified his security clearance application and his signed sworn statements to special agents of the Defense Security Service by failing to disclose he had received a non-judicial punishment in 1999. Applicant failed to mitigate security concerns under Guidelines B, C, E, and J of the Directive. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 2, 2005, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference), Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing April 1, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me June 27, 2005.

On November 16, 2005, 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 called no witnesses, submitted nine exhibits for admission to the record (Ex. 1 through 9), and offered nine documents for administrative notice, which were enumerated I through IX. Applicant objected to the admission of Government's proposed exhibits 6, 7, and 8 because they were not "authenticated documents." The three exhibits to which Applicant objected were records compiled in the regular course of business by the Department of Defense and the Department of Justice, pursuant to the provisions of Section 5 of Enclosure 1 of the Directive. After weighing arguments made by the Government and the Applicant, I admitted

Government Exhibits 6, 7, and 8 to the record. Applicant objected to the Government's request that I take administrative notice of four documents identified as II, III, VII, and VIII. While duly noting Applicant's objections, I stated I would review and consider the documents in writing my decision in this case.

Applicant called no witnesses, submitted 28 exhibits, and offered two documents for administrative notice. Applicant's exhibits (Ex.) were identified as Ex. A-1 through A-6, Ex. B-1 through B-11, Ex. C-1 and C-2-A through C-2-D, Ex. D-1-A, D-1-B, and D-2, Ex. E-1, E-2-A, E-2-B, E-2-C, Ex. F-1, F-2, and F-3, Ex. H, and Ex. I. Applicant's documents for administrative notice were identified as 1 and 2. The Government objected to Applicant's Ex. A-2, which was an unsigned letter of character reference and Ex. I, an unsigned and undated security clearance application. Two documents, introduced as Ex. G-1 and G-2, were not entered in the record as exhibits but were designated for administrative notice. Applicant's Ex. A-2 was entered in the record provisionally and Applicant supplied a signed copy of the letter in a post-hearing submission dated November 17, 2005. Without objection, the supplemented Ex. A-2 was entered in the record. Applicant's Ex. I was admitted to the record with the caveat that I would weigh its relevance and materiality in light of the document's lack of signature and lack of evidence of transmittal. On December 1, 2005, DOHA received the transcript (Tr.) of the proceeding.

## **FINDINGS OF FACT**

The SOR contains one allegation of disqualifying conduct under Guideline C, Foreign Preference, eight allegations of disqualifying conduct under Guideline B, Foreign Influence, four allegations of disqualifying conduct under Guideline E, Personal Conduct, and one allegation of disqualifying conduct under Guideline J, Criminal Conduct. Applicant admitted all allegations in the SOR. Applicant's admissions are incorporated as findings of fact.

Applicant is employed by a government contractor as a security consultant. (Ex. 5 at 2.) He is married and the father of four young children. He has held a security clearance since approximately 1994. His employer has requested he be granted a top secret clearance. (Tr. 68-69.)

Applicant was born in the U.S. in 1965 to parents who had emigrated from the West Bank, Palestine. Applicant's parents became naturalized U.S. citizens in 1968. Applicant's father served as an enlisted man for 20 years in the U.S. military. In approximately 1979, Applicant's father retired from the military, and he, Applicant's mother, and Applicant returned to the West Bank to live. From approximately 1980 to 1984, Applicant attended high school in Ramallah, West Bank. After graduating from high school, Applicant attended a university in Israel for approximately six months before returning to the U.S. In 1991, Applicant received a bachelor of arts degree in political science from a U.S. university. (Ex. 1; Ex. 5)

In 1991 or 1992, when he learned his father was ill, Applicant returned to the West Bank and worked for his father for about a year. He returned to the U.S. during 1992 and supported himself by doing odd jobs. He returned to the West Bank in 1993 and met a woman whom he married in June 1993. (Ex. 5 at 2.)

Applicant returned to the U.S. and enlisted in the U.S. military in July 1993. He served in the military for approximately six years. During that time he received training as a medical laboratory technician and as a paralegal. ( Ex. 1.)

In 1994, Applicant was detained and charged with sexual battery. He was tried, found guilty, and sentenced to 90 days in jail, with 90 days suspended for one year, and fined \$100. On appeal, the charge of sexual battery was *nolle prosequi*. (Ex. 3 at 3)

In August 1998, Applicant sought a new assignment and submitted a security questionnaire as a part of an application packet to a military unit in his command. He failed to provide information on the questionnaire about his sexual battery charge and conviction. When questioned later by an authorized investigator, Applicant failed to inform the investigator of his sexual battery arrest and conviction and told the investigator that his application, which contained no information about the sexual battery conviction, was true and accurate. (Ex. 3 at 4.) The investigator then confronted Applicant with the facts of his sexual battery conviction. Applicant prepared a statement detailing the facts of his arrest and conviction. (Ex. 3 at 4-5.)

Applicant was not selected for the position. In January 1999, he received a non-judicial punishment under Article 15, Uniform Code of Military Justice, for signing a false official record with the intent to deceive. Applicant's command suspended/vacated the Article 15 punishment in recognition of Applicant's prior good conduct and performance. In May 1999, when questioned by a staff judge advocate, Applicant asserted he had not been represented by counsel at his sexual battery trial, when, in fact, he had been represented by counsel. When Applicant's command was informed of Applicant's additional falsification, the Article 15 suspension of punishment, which included a forfeiture of \$200 in pay for two months, was vacated. (Ex. 3 at 5.) On June 13, 1999, Applicant received an honorable discharge. (Ex. H.)

On June 11, 2001, Applicant signed a security clearance application (SF-86), which was submitted electronically July 6, 2001. (Ex. 1.) Question 25 on the SF-86 reads as follows:

In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? (include non-judicial, Captain's mast, etc.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant answered "no" to Question 25. (Ex. 1.)

On June 13, 2002, Applicant was interviewed by a special agent of the Defense Investigative Service (DIS). In the interview, Applicant discussed his military service but deliberately failed to disclose that he had received a non-judicial punishment in January 1999. (Ex. 5 at 2.) At the conclusion of the interview with the DIS agent, Applicant certified his statement containing the deliberate omission of his non-judicial punishment as true and correct. (Ex. 5 at 7)

Applicant was interviewed by a special agent of the Defense Security Service (DSS) on the morning of April 19, 2004. At the conclusion of the interview, and in the presence of the special agent, Applicant signed a statement which read, in pertinent part, as follows:

I [Applicant] state that I have personally read and reviewed my Electronic Personal Security Questionnaire [EPSQ], dated 6 Jul 01, and other than the above updated information regarding my residency, employment address, new family members and foreign travel, I swear/affirm, under oath, that all other information on the EPSQ is accurate, correct, and/or true.

Applicant deliberately failed to disclose he had received a non-judicial punishment in January 1999. (Ex. 4.)

Later that day, Applicant was again interviewed by the DSS special agent. He admitted willful falsification of his July 6, 2001 security clearance application by answering Question 25 as "no" when the true and correct answer should have been "yes" because in January 1999, he had received an Article 15 non-judicial punishment for providing a false statement with intent to deceive. He also admitted intentionally providing false information to authorized investigators during his June 13, 2002 interview and his interview on the morning of April 19, 2004. (Ex. 3 at 1-2.)

Applicant said he purposely falsified his SF-86 by not listing his Article 15 non-judicial punishment and he purposefully concealed that information from two authorized investigators in two interviews because he was ashamed of his actions. He said he was so ashamed he never told his father, a retired U.S. military enlisted man. (Ex. 3 at 2.)

Applicant is devoted to his parents, who are dual citizens of the U.S. and the West Bank and who reside in Ramallah, West Bank. (3) It has been Applicant's parents' practice to travel every two years to the U.S. for the father's medical

treatment. (Attachment to Answer to SOR.) Applicant speaks with his father by telephone two or three times a year<sup>(4)</sup> and he periodically sends his parents \$2,000 to help them with their medical expenses. (Tr. 76-77.)

Applicant's sister is a citizen of the U.S. She resided with her parents in the West Bank and helped to care for Applicant's father. At the time of Applicant's hearing, she was residing in Jerusalem with her husband, a citizen of Israel. She works for a non-governmental organization. (Tr. 73)<sup>(5)</sup> Applicant's wife's parents are citizens and residents of the West Bank.

Applicant traveled to the West Bank in 1993, 1996, 1998, and 2003, for the purpose of visiting his parents. (Tr. 80-81.) In 1999, Applicant and his wife traveled to the West Bank for the funeral of the wife's grandfather. (Tr. 82.)

In 1999, Applicant had a valid U.S. passport, issued November 3, 1998. (Ex. 4 at 5.) While in Gaza, he applied for and was issued a Palestine passport travel document by the Palestinian Authority. Applicant claimed this document enabled him to stay longer to visit his parents than if he had entered the West Bank on his U.S. passport. To establish his eligibility for the Palestine passport travel document, he was required to show he was of Palestinian extraction. His parents accompanied him when he applied for the Palestine passport travel document and vouched for his Palestinian extraction to the issuing authorities. His U.S. passport was not annotated in any way to show he had a Palestine passport travel document. The document expired in 2002, and Applicant did not renew it. (Tr. 82-83; 130-131.) Applicant denies he maintains dual citizenship and claims that his loyalty and allegiance lie with the U.S. (Ex. 5 at 5.)

In 2001, Applicant's father suffered a heart attack. He was taken by ambulance from the West Bank to Jordan for treatment. Applicant flew from the U.S. to Jordan to stay with his father during his hospitalization and treatment. He stayed with his father for five days, and then returned to the U.S. (Tr. 82.) Applicant's father's health continued to deteriorate. (Tr. 78.)

In 2003, Applicant's father came to the U.S. for medical treatment at a military hospital. After his treatment, Applicant's father was weak and perceived to be too ill to travel back to the West Bank alone. Applicant flew with his father to the West Bank and stayed with him for ten days before returning to the U.S. (Tr. 82-83.) Applicant plans to visit his parents in the future. (Tr. 111.)

Applicant submitted seven current references supporting his request for a security clearance. (Ex. A, 1-7.) He also submitted eleven letters of character reference from his military supervisors and co-workers who wrote in support of him in 1999 at the time of his Article 15 non-judicial punishment. ( Ex. B, 1-11.)

I take administrative notice that during the 1967 war, Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem. Today, one-half of the world's almost nine million Palestinians live in Israel or under Israeli occupation. More than 1.3 million Palestine Arab refugees who are registered with the United Nations Relief and Works Agency live in 59 refugee camps scattered in Lebanon, Syria, Jordan, the West Bank, and Gaza. (Document VII for Administrative Notice at 14.)

In the years since the 1967 war, both the Palestinians and Israeli security forces have been accused of serious human rights abuses in the Occupied Territories, including the West Bank. Pursuant to negotiations between Israel and the Palestinians, an elected Palestinian Authority exercises jurisdiction in parts of Gaza and the West Bank. While the Palestinian Authority is responsible for policing, keeping order, and carrying out a number of civil functions, the division of responsibilities between Israel and the Palestinian Authority is complex, and information on entry, customs requirements, arrests, and other matters in the West Bank can change without prior notice. (Document I for Administrative Notice at 1-2; Document III for Administrative Notice at 15-16.)

I also take administrative notice that U.S. citizens of Palestinian origin may be considered by Israel to be residents of the West Bank, especially if they were issued a Palestinian identification number or if they were, as minors, registered in either of their parents' Palestinian identification documents. These individuals could be required to enter or leave the West Bank through designated border crossings at times of heightened security. Americans who are residents of the West Bank may not be allowed to enter or exit the West Bank even if they hold valid U.S. passports. (Document I for Administrative Notice at 2.)

In the West Bank, violent demonstrations and terrorist attacks can occur without warning. Palestinian terrorists have attacked people or institutions that, in the Palestinians' view, support Israel, including U.S. citizens, property, and installations. U.S. citizens have been killed or injured in terrorist actions in Israel, Jerusalem, the West Bank, and Gaza. U.S. Embassy and Consulate employees and their families have been prohibited from using public trains and buses in these areas. (Document I for Administrative Notice at 3; Document VII for Administrative Notice, at 13.)

U.S. officials have called upon the Palestinian Authority to curb violence against Israel. President Bush, in remarks at the National Defense University on March 8, 2005, stated "that the fight against terrorists is critical to the search for peace and for Palestinian statehood." (Document VIII for Administrative Notice at 6.)

## 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. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

In addition to the guidelines in the Directive, official DoD policy guidance must also be considered. Of particular relevance in this case is an August 16, 2000, memorandum from Assistant Secretary of Defense Arthur L. Money (Money Memorandum) clarifying the application of Guideline C, Foreign Preference, to cases involving an applicant's possession or use of a foreign passport.

Enclosure 2 of the Directive sets forth personal 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



## Guideline C - Foreign Preference

In the SOR, DOHA alleged, and Applicant admitted, that he applied for and was issued a Palestine passport travel document by the Palestinian Authority in Gaza on June 26, 1999, even though he was a U.S. citizen by birth and had a valid U.S. passport issued on November 3, 1998, and that the Palestine passport travel document expired June 25, 2002 (§ 1.a.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States.

Applicant's admitted conduct raises security concerns under Disqualifying Conditions (DC) E2.A3.1.2.1. and E2.A3.1.2.2. of Guideline C. Applicant, who held U.S. citizenship by birth and was in possession of an active U.S. passport, actively sought a Palestine passport travel document to make his travel to and stay in the West Bank more convenient. In order to obtain the Palestinian document, he had to show he was of Palestinian heritage. Applicant's acquisition of the Palestine passport travel document permitted him to exercise the rights and privileges of foreign citizenship and indicated a preference for the Palestinian Authority over the U.S.

We turn to an examination of applicable mitigating conditions under Guideline C that pertain to the exercise of dual citizenship. An applicant may mitigate DC E2.A3.1.2.1. under Guideline C if he shows his dual citizenship is based solely on his parents' citizenship or birth in a foreign country. Mitigating Condition (MC) E2.A3.1.3.1. Applicant was a U.S. citizen by birth. His election of dual citizenship with the Palestinian Authority was based upon his convenience as a traveler and not on his parents' citizenship or birth in a foreign country. Thus MC E2.A3.3.1. is inapplicable.

Under MC E2.A3.1.3.4. an applicant can mitigate the exercise of dual citizenship by expressing a willingness to renounce dual citizenship. Applicant was deeply concerned about his father's health and well being, and was willing to adopt an alternative national identity in order to be able to spend more time with his parents in the West Bank. While he indicated he was a loyal U.S. citizen and would not exercise dual citizenship in the future, he failed to demonstrate he would not exercise dual citizenship again if it became necessary to do so in order to assist his father. Accordingly, MC E2.A3.1.3.4. does not apply to Applicant's exercise of dual citizenship with the Palestinian Authority.

Possession and use of a foreign passport may be a disqualifying condition under § E2.A.3.1.2.2. of Guideline C. In a memorandum (Money Memo), dated August 16, 2000, Assistant Secretary of Defense Arthur L. Money stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. 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 raises 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. Therefore, consistent application of the guideline 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 State Government.

Applicant's Palestine passport travel document expired in 2002 and he has not renewed it. However, he failed to demonstrate he would not renew the document in order to be of assistance to his father at some future time. He presented no evidence that he had been granted approval by the U.S. government to acquire and use a Palestine passport travel document.

The Money Memorandum does not directly discuss the issue of the possession of an expired passport. However, expired passports are useful if someone wishes to obtain a new passport. The Palestinian Authority is not friendly to the United States, and the Applicant has a heavy burden to show that his possession of an expired Palestine passport travel document, as well as his frequent travels to the West Bank, do not have a continuing security significance. His statement that he does not intend to use the Palestine passport travel document to enter the West Bank is not sufficient to overcome the security significance of his prior conduct, especially when he intends to visit family there in the future on a regular basis or when his father's health circumstances require. Accordingly, SOR allegation 1.a. is concluded against the Applicant.

## **Guideline B - Foreign Influence**

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's parents, with whom he maintains contact, are dual citizens of the United States and the West Bank, currently reside in the West Bank, and travel to the U.S. about every other year (¶2.a.); that Applicant's sister is a U.S. citizen who resides in the West Bank (¶ 2.b.); that Applicant's parents-in-law are citizens of the West Bank (¶ 2.c.); that Applicant periodically sends his parents approximately \$2,000 (¶ 2.d.); that Applicant worked in the West Bank for his father from approximately 1992 to 1993 (¶2.e.); that Applicant traveled to the West Bank in 1993, 1996, 1998, 1999, and 2003 (¶2..f.); that Applicant traveled to Jordan in 2001 (¶2..g.); and that on June 26, 1999, Applicant applied for and was issued a Palestine Passport Travel Document, even though he was a U.S. citizen by birth and possessed a valid U.S passport, and that the Palestine passport travel document expired June 25, 2002 (¶ 2.h.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the Palestinian Authority has neither prevented nor disavowed terrorist actions hostile to the United States and that factions within it support international terrorism. Additionally, it does not deter internal factions that oppose, through violence, U. S. policies such as the Middle East peace process and human rights. These hostile actions by the Palestinian Authority directly threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of the West Bank, which is under Palestinian Authority control, could be vulnerable to coercion, exploitation, or pressure.

Applicant admits all Guideline B allegations in the SOR. His admissions raise security concern under Guideline B, Disqualifying Condition (DC) E2.A2.1.2.1. and DC E2.A2.1.2.2. Applicant has immediate family members who are citizens of, or resident or present in a foreign country. Applicant share his home with his wife, whose parents are citizens and residents of the West Bank. Applicant is close to his parents and his sister, who are U.S. citizens living in the West Bank and Jerusalem, and he communicates with them regularly. He sends his parents money periodically to help them with medical expenses. From approximately 1992 to 1993, he worked for his father in the West Bank. In addition to his trip to the West Bank in 1993, he has visited family there in 1996, 1998, 1999, and 2003. In 1999, while holding an active U.S. passport, he acquired a Palestine passport travel document to facilitate his travel to the West Bank. When his father became ill in 2001, he flew to Jordan, where his father had been taken from the West Bank for medical treatment.

The presence of Applicant's immediate family members in the West Bank raises security concerns because their presence there could make Applicant vulnerable to coercion, exploitation, or pressure by a hostile foreign government or by terrorist groups operating in the West Bank.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the United States. Mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's parents, sister, or his parents-in-law are agents of a foreign power, they are in a position to be exploited by individuals or groups in the West Bank with interests antithetical to the United States, and those hostile foreign interests could force Applicant to choose between loyalty to his family members and the United States. (ISCR Case No. 02-13595, at 4-5 (App. Bd. May 10, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with

foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant is an attentive and devoted son and brother. His contacts with his parents and sister, who are U.S. citizens and residents of the West Bank and Jerusalem, are based on ties of familial affection or obligation. He is in contact with his parents and sister frequently, sometimes as often as twice a month, and those contacts are neither casual nor infrequent. He visits his parents approximately every two years, and more often if his father's health condition requires his assistance. Accordingly, MC E2.A2.1.3.3. does not apply to Applicant's relationships with his close family members in the West Bank and Jerusalem.

Applicant traveled to the West Bank in 1993, 1996, 1998, 1999, and 2003 to visit his family there. From approximately 1991 or 1992 to 1993, he remained in the West Bank and worked for his father. In 1999, he acquired a Palestine passport travel document to facilitate a longer stay in the West Bank than would have been permitted him if he used his valid U.S. passport. In 2001, Applicant traveled to Jordan, where his father was hospitalized. These facts raise security concerns under DC E2.A2.1.2.6. because they reflect conduct that could make Applicant vulnerable to coercion, exploitation, or pressure by a foreign government or by agents hostile to the U.S. None of the mitigating conditions under Guideline B apply to Applicant's acquisition of a foreign passport travel document, his travel to and work in the West Bank, or his travel to Jordan.

Nothing in Applicant's testimony suggested he was not a loyal American citizen and a credit to his country. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, the Guideline B allegations in subparagraphs 2.a. through 2.h. of the SOR are concluded against the Applicant.

### **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, when he falsified material facts in his answer to Question 25 on the SF-86 he electronically submitted on or about July 6, 2001, by denying that in the seven years before completing and certifying his security clearance he had been subject to court-martial or other disciplinary proceedings (including non-judicial punishments) under the Uniform Code of Military Justice, when in fact he had received a non-judicial punishment under Article 15 for falsely signing an official record, with intent to deceive on or about August 31, 1998. DOHA also alleged that, as a result, Applicant was sentenced to forfeiture of \$200.00 pay per month for two months, suspended until July 28, 1999, but that the suspension of the non-judicial punishment was vacated May 20, 1999, because Applicant made, with intent to deceive, an official statement on or about May 12, 1999, which was false and which he knew to be false ¶ 3.a.(1).

Additionally, DOHA alleged that Applicant's personal conduct raised security concerns when he falsified material facts during an interview with an authorized DIS investigator on June 13, 2002, when he deliberately omitted material facts about his military service and deliberately failed to disclose he had received a non-judicial punishment in January 1999, as described in ¶ 3.a.(1) above (¶ 3.b.); that Applicant, in an interview with an authorized DSS investigator on April 19, 2004, deliberately omitted material facts in that he denied he ever received a non-judicial punishment while serving in the U.S. military and had deliberately failed to disclose he had received a non-judicial punishment in January 1999, as

described in ¶ 3.a.(1) above (¶ 3.c.); and that in a signed sworn statement dated April 19, 2004, and presented to an authorized DSS investigator, he falsified material facts when he stated all information on the electronic SF-86 submitted on July 6, 2001, was accurate, whereas in truth he deliberately failed to disclose he had received a non-judicial punishment in January 1999, as set forth in subparagraph 3.a.(1) above (¶3.d.).

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR and admitted by the Applicant, the Government has established its case. Applicant's failure to answer Question 25 completely, truthfully, and correctly on his security clearance application raises a security concern under Disqualifying Condition (DC) E2.A5.1.2.2 of Guideline E. His deliberate false statements to investigators in connection with a personal security or trustworthiness determination raise concerns under DC E2. A5.1.2.3. In two signed sworn statements to DIS and DSS special agents, dated June 13, 2002, and April 19, 2004, Applicant deliberately omitted material facts by failing to disclose that he had received a non-judicial punishment in January 1999. In a third signed, sworn statement on April 19, 2004, Applicant said he deliberately failed to tell the truth about his non-judicial punishment because he was ashamed. His concealment of information he considered embarrassing or professionally damaging could make him vulnerable to coercion and blackmail. DC E2.A5.1.2.4. His conduct raises additional concerns under DC E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. His repeated false statements raise concerns about his truthfulness and honesty. Applicant's continued reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government. It is well established that embarrassment is not a mitigating condition under the Directive. ISCR Case No. 99-0557 at 3 (App. Bd. Jul.10, 2000).

Mitigating condition (MC) E2.A5.1.3.1 does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. MC E.2.A.5.1.3.2. Applicant supplied the correct information only when repeatedly questioned by authorized investigators of the DIS and DSS. His falsifications were multiple and occurred recently. Accordingly, MC E.2.A.6.1.3.2. does not apply to the facts of Applicant's case. The Guideline E allegations in the SOR are concluded against the Applicant.

## **Guideline J - Criminal Conduct**

In the SOR, DOHA alleged Applicant's deliberate material falsifications to conceal unfavorable information about his military record, including his non-judicial punishment, on his SF-86, which he signed on June 11, 2001, and in certified, signed statements made to authorized investigators on June 13, 2003 and April 19, 2004, constituted a violation of

Federal law under section 1001 of Title 18, United States Code. (¶ 3.a.)

Applicant admitted making knowing and willful false statements in his response to Question 25 on his security clearance application. On June 13, 2002, Applicant provided a statement to a DIS agent which he signed and certified as "correct and true as written."

On April 19, 2004, he provided two sworn written statements to a DSS special agent, and he signed his name below the following statement, which reads, in pertinent part, as follows:

I certify that the following statement is true, complete and accurate to the best of my knowledge and belief and is made in good faith. I understand that a knowing and willful false statement can be punished by fine or imprisonment or both. (See U.S. Code, Title 18, Section 1001.)

Under section Title 18, Section 1001, of the United States Code, it is a felony crime to knowingly make a materially false, fictitious, or fraudulent statement to a department or agency of the Federal government. Applicant admitted preparing and signing a SF-86 and two written statements to lawful investigators in which he deliberately concealed unfavorable information about his military service, including his non-judicial punishment.

Applicant's admitted criminal conduct raises security concerns under Disqualifying Conditions (DC) E2.A10.1.2.1. and E2.A10.1.2.2. of Guideline J. His history or pattern of criminal activity raises doubts about his judgment, reliability and trustworthiness. ¶ E2.A10.1.1. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

Applicant's falsifications of his security clearance application and signed, sworn statements occurred in 2001, 2002, and 2004. These criminal acts were recent. They were not isolated events but instead demonstrated a pattern of criminal conduct. Thus, neither Mitigating Condition (MC) E2.A10.1.3.1. nor MC E2.A10.1.3.2. of Guideline J applies to Applicant's Guideline J conduct. Additionally, no other mitigating conditions under Guideline J are applicable to the facts of Applicant's case. Accordingly, the Guideline J allegations in the SOR are concluded against the Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.(1): Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Paragraph 4. Guideline F: AGAINST APPLICANT

Subparagraph 4.a.: Against Applicant

**DECISION**

In light of all of 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 is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. In his answer to the SOR, Applicant admitted his parents exercised dual citizenship with the U.S. and the West Bank. When asked directly by his counsel if his parents held any citizenship in addition to their U.S. citizenship, he responded: "Not to my knowledge." (Tr. 70.)



4. In an Employment Eligibility Verification he completed and certified on February 21, 2000, for employment with a Federal contractor, Applicant stated he spoke with his parents by telephone twice a month. (Ex. 8 at 3.)

5. In his answer to the SOR, dated April, 1, 2005, Applicant stated his sister was residing in the West Bank and caring for their parents. (Attachment to Answer to SOR at 1.)