

DATE: June 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-06544

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

David Price, Attorney at Law

SYNOPSIS

All of applicant's immediate family members, including his minor daughter, are residents and/or citizens of foreign countries. These family members leave applicant vulnerable to coercion or pressure. Clearance is denied.

STATEMENT OF THE CASE

On January 14, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to applicant which detailed reasons 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on February 4, 2005. The case was assigned to the undersigned on November 10, 2005. A Notice of Hearing was issued on November 15, 2005, and the hearing was held on January 4, 2006. The transcript was received on January 12, 2006.

RULINGS ON PROCEDURE

At the hearing, SOR Allegation 1.h. was amended. As amended, SOR Allegation 1.h. is as follows:

1.h. Your mother-in-law and father-in-law are citizens and residents of Jordan.

FINDINGS OF FACT

Applicant is a 36 year old employee of a defense contractor.

Applicant was born and raised in Kuwait. In 1988, he obtained a green card and moved to the United States to continue his education. In October 1994, he became a United States citizen. After graduating with a B.S. degree in December 1994, he began a job search. He eventually found employment with a United States company in Saudi Arabia. He moved to Saudi Arabia in 1995 and worked there until December 1997 (Exhibit G).

While working in Saudi Arabia, he met a Jordanian woman. They married in 1996 in Jordan. In December 1997/January 1998, applicant's employer transferred him to the United States. Applicant's wife remained in Jordan, where she gave birth to their daughter. The daughter is a United States citizen and most likely a citizen of Jordan. In early 1999, applicant's employer transferred him back to Saudi Arabia, where he worked until April 2001. In April 2001, he was transferred back to the United States. He worked for the same company until he was laid off in December 2001. He found another job in the defense industry in June 2002.

Applicant and his wife divorced in 2003. Since the divorce occurred while the wife was in Jordan, the divorce is governed by Jordanian law. Under Jordanian law, the daughter, who is now seven years old, would have stayed with the mother until she was 11 years old. However, because the wife remarried, she was required to give custody of the child to either the father (applicant) or to her mother (applicant's former mother-in-law). The child was given to the mother. When the child turns 11, applicant will have custody of her. At that time, if not sooner, applicant intends to bring her to the United States.

Applicant intends to remain in the United States. In his words, "I chose to be here and I'll be staying here forever. This is my life. And I'm gonna have my daughter here. I'm gonna have a family here. At one point, I'm gonna get married. I'm gonna get married here in the States. This is my life here" (TR at 176).

Applicant's mother is a citizen of Jordan who resides in Kuwait. Applicant's father is a citizen of Jordan and the United States, and resides in Kuwait. Applicant speaks with his mother about once a week.

Applicant has four brothers and one sister. He has contact with them on a monthly basis. None of them works for a foreign government. Two of applicant's brothers are citizens of both the United States and Jordan, and currently reside in Saudi Arabia. A third brother is a citizen of Jordan who resides in Kuwait. The fourth brother is a citizen of Jordan and resident of Saudi Arabia. The sister is a citizen and resident of Jordan.

Applicant made over 20 trips to Jordan after becoming a United States citizen. Most of these trips occurred while he was living and working in the Middle East. Applicant maintained a savings account in Jordan while he was traveling there, but has since closed it (TR at 112, 126-129; Exhibit B).

In December 2000, applicant invested approximately \$25,500.00 in a hospital project in Jordan. When applicant found out that this investment might cause him a problem with his security clearance request, he cashed out of it (TR at 113-114; Exhibit A). All of applicant's assets are currently in the United States.

When applicant found out that his Jordanian citizenship might cause a problem with his security clearance request he tried renouncing his Jordanian citizenship. Because of his age he was told that before he could renounce his Jordanian citizenship, he had to either serve two years in the Jordanian military or pay \$6,000.00 to get an exemption. Applicant paid the \$6,000.00, received his exemption, and then renounced his Jordanian citizenship (TR at 115-116).

Letters from 15 of applicant's coworkers were admitted into evidence (Exhibit D). These letters establish that applicant is considered to be a reliable, trustworthy individual who is loyal to the United States.

Four individuals who have worked with applicant appeared at the hearing and testified that applicant is an honest, hardworking man.

CONCLUSIONS

The evidence establishes that applicant's parents, daughter, and five siblings are citizens and/or residents of foreign countries. This fact requires application of Disqualifying Condition (DC) E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*).

Mitigating Condition (MC) E2.A2.1.3.1 (*a determination that the immediate family member(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*) is not applicable. Although I conclude that none of applicant's immediate family members is an agent of a foreign government, I cannot conclude that applicant's immediate family members are not in a position to be exploited by any of the aforementioned foreign governments in a way that could force applicant to choose between loyalty to them and loyalty to the United States.

It is difficult to ignore the fact that *all* of applicant's immediate family members are citizens and/or residents of foreign countries. Of particular concern is applicant's daughter. He clearly loves her very much, and desperately wants custody of her. Despite this fact, she is beyond his reach - residing in Jordan with his former mother-in-law. Applicant's ties of affection to his immediate family members in general, and to his daughter in particular, raise significant security concerns as they clearly leave applicant vulnerable to coercion or pressure by one or more foreign governments.

Although applicant presented credible evidence that he is an honest, hardworking man who intends to make the United States his permanent home, he has not mitigated the security concerns arising from the citizenships/residences of his immediate family members. Accordingly, I have no choice but to conclude that it is not now clearly consistent with the national interest for applicant to have access to classified information.

FORMAL FINDINGS

GUIDELINE B: AGAINST THE 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.

Joseph Testan

Administrative Judge