

DATE: September 21, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-10012

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a dual citizen of Jordan and the United States. He has not surrendered his Jordanian passport or renounced his Jordanian citizenship. He has substantial foreign financial interests, namely a house and a bank account valued at about a half million dollars, that poses a significant security risk. Clearance is denied.

STATEMENT OF THE CASE

On May 4, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 31, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 6, 2006. A notice of hearing was issued on August 2, 2006, scheduling the hearing for August 24, 2006. At the hearing the Government presented seven exhibits. The Applicant presented three exhibits and he testified on his own behalf. The official transcript (Tr.) was received on August 30, 2006.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (See Government Exhibit 4).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 41 years of age and holds a Bachelor's Degree in Engineering. He is employed as a Project Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Kuwait in 1965. He and his family moved to Jordan in 1978. In 1983, at the age of eighteen, he came to the United States to attend college. After graduating with a Bachelor's Degree in Engineering in 1989, he was granted a work visa and he obtained a job. After four years with a work visa, he became eligible and applied for legal residency. He became self-employed in 1998, and in 2001, he became a United States citizen.

The Applicant's parents, one brother and two sisters remain citizens and residents of Jordan. The Applicant's father is retired from the stationery business, but invested in real estate much of his life. His mother is a housewife. The Applicant remains in regular contact with his parents. The Applicant's brother is in the ladies accessories business. His two sisters in Jordan are both housewives. One is married to a carpenter, the other is married to a man who works on printers and copiers.

None of the Applicant's family members in Jordan are affiliated with the Jordanian government in any capacity. The Applicant considers himself close with all of his family and he travels to visit them in Jordan on an annual basis at Christmas time. Until 1992, he did not travel frequently to Jordan due to limited financial means. Since then he has traveled to Jordan almost every year at Christmas time. He most recent traveled to Jordan in December 2005 to January 2006.

The Applicant also has two other sisters who reside in the United States. One of them is a Jordanian citizen. The other sister is a dual citizen of both the United States and Jordan.

The Applicant has several significant financial assets in Jordan. He owns a house valued between approximately \$75,000.00 to \$100,000.00. He inherited the house from his father. The Applicant claims that the house is in his name only, but that he does not receive any profits from the property since his family rents the house out for income property. The Applicant plans to keep the house in Jordan out of respect for his family and he has no desire to sell it. He also maintains a bank account in Jordan that has about \$400,000.00 in it. (Tr. p. 31). He transfers money into the Jordanian account periodically so that when he visits his family, he is able to use money from that account to treat his nieces, nephews and parents.

The Applicant's financial portfolio in the United States indicates that he has over 1.3 million in assets here. (Tr. p. 32 and Applicant's Exhibit A). These assets include numerous savings accounts, investment accounts and real property. He further states that when he gets a chance, he will transfer most of his money in his Jordanian account to the United States.

Until December 2005, the Applicant possessed approximately ten acres of land in Jordan valued at approximately \$400,000.00. He sold the property in December 2005, and the money was placed in a Jordanian bank account.

Paragraph 2 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant admits that he is a dual citizen of Jordan and the United States. He initially obtained a Jordanian passport on January 2, 2000, for foreign travel purposes. The Jordanian passport expired on January 1, 2005, and was subsequently renewed. He currently possesses an active Jordanian passport that is not scheduled to expire until March 21, 2010. He does not plan to use it or renew it again. Since obtaining his United States passport in 2001, he has not used his Jordanian passport to travel. He is aware of the Money Memorandum and its provisions. He claims that he tried to surrender his Jordanian passport, but that the Jordanian Embassy does not handle the process anymore. (See Applicant's Exhibit C). He also stated that in order to possess property in Jordan he must have a Jordanian passport. He

has not yet renounced his Jordanian citizenship, because he was in the middle of a move, but plans to do so if it is necessary. He believes that it may be necessary for him to travel to Jordan to renounce his citizenship and he might be more of a target in Jordan under these circumstances. (Tr. p. 35).

Letters of recommendation submitted on behalf of the Applicant from the Director of Propulsion and Fluid Product Center and a Program Manager indicate that he is an excellent performer, with excellent work habits who is very well respected by all of his peers and the management team. He is considered hard working, diligent, thorough and completes all tasks on time. He shows a high level of integrity, honesty and trustworthiness. (See Applicant's Exhibit B).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

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.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

None.

Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's

conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his

suitability for access to classified information.

The Applicant is a dual citizen of Jordan and the United States who possesses a Jordanian passport. Disqualifying Conditions, (1) *The exercise of dual citizenship* and (2) *Possession and/or use of a foreign passport* apply. None of the mitigating conditions apply.

Since learning that possession of a foreign passport is not permitted when holding a security clearance, the Applicant has done nothing to bring himself in compliance with the provisions of the oney Memorandum. He has not surrendered his foreign passport to the Jordanian Embassy, nor has he renounced his Jordanian citizenship. Although he states that he plans to do these things, he has not done them yet. If his excuse is that he did not know what to do, he has not exercised due diligence to even find out what to do. Accordingly, he has clearly not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is vulnerable to foreign influence. The Applicant's father, mother, two sisters and a brother are all citizens and residents of Jordan. The Applicant has close, regular, frequent and continuing contact with his parents and siblings. Furthermore, the Applicant's foreign bank account and his foreign property are substantial financial interests in Jordan that make him vulnerable to foreign influence. In fact, his net worth in Jordan is approximately one-half million dollars. Although his assets in the United States are more substantial than his assets in Jordan, considering his very close connection with his family in Jordan, a security risk clearly exists. Disqualifying Conditions (1) *an immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*, and (8) *A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence* apply. The Applicant retains close ties with Jordan. Based on the foregoing, under the current policy, the Applicant's situation raises a security concern and Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines B and C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under B and C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: Against the Applicant 1.c.: Against the Applicant

Subparas. 1.d.: Against the Applicant

1.e.: Against the Applicant

1.f.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge