

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is employed by a federal contractor. He is a native of Jordan, now a naturalized U.S. citizen. His wife and children are native-born U.S. citizens residing in the U. S. His parents and eight siblings are citizens of and reside in Jordan. He holds an expired Jordanian passport and dual citizenship. Under the "whole person concept," he successfully mitigated security concerns about foreign influence. He surrendered his Jordanian passport and has renounced his Jordanian citizenship, thereby mitigating security concerns about foreign preference. Clearance is granted.

CASE NO: 04-11414.h1

DATE: 06/16/2006

DATE: June 16, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-11414

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

## **FOR APPLICANT**

Laura J. Anderson, Esq.

### **SYNOPSIS**

Applicant is employed by a federal contractor. He is a native of Jordan, now a naturalized U.S. citizen. His wife and children are native-born U.S. citizens residing in the U. S. His parents and eight siblings are citizens of and reside in Jordan. He holds an expired Jordanian passport and dual citizenship. Under the "whole person concept," he successfully mitigated security concerns about foreign influence. He surrendered his Jordanian passport and has renounced his Jordanian citizenship, thereby mitigating security concerns about foreign preference. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to 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. The SOR alleged reasons under Guidelines B (foreign influence) and C (foreign preference) 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 Applicant's security clearance.

In a written statement dated August 24, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to another administrative judge on October 20, 2005, and was reassigned to me on November 7, 2005, due to caseload considerations. A Notice of Hearing was issued November 10, 2005, scheduling the hearing for December 14, 2005. The hearing was held as scheduled. At the hearing, the government offered six exhibits and Applicant submitted three exhibits. Applicant called two witnesses and he testified in his own behalf. I kept the record open until January 16, 2006. Applicant submitted four exhibits, Exhibits D-G, submitted January 16, 2006. Department Counsel offered no objection. Applicants Exhibits D-G are received in evidence. The transcript (Tr.) was received December 28, 2005.

## FINDINGS OF FACT

Applicant admitted the allegations in SOR subparagraphs 1.c., 1.d., and 2.a.<sup>(1)</sup> All other allegations were denied. His admissions are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is a 46-year-old employee of a federal contractor.<sup>(2)</sup> He immigrated to the U.S. from Jordan at the age of 18.<sup>(3)</sup> He never served in the Jordanian military.<sup>(4)</sup> After coming to the U.S. he earned a degree in electrical engineering.<sup>(5)</sup> He became a U.S. citizen on November 12, 1985.<sup>(6)</sup> He met his wife, a native-born American, while in college. They have been married 24 years and have 4 children.<sup>(7)</sup> They have no financial interests outside the U.S.<sup>(8)</sup>

Each time he and his family members have traveled to Jordan (1991, 1999, and 2002) they have used U. S. passports.<sup>(9)</sup> In 1991, the trip was to visit relatives.<sup>(10)</sup> His wife has not been to Jordan since.<sup>(11)</sup> In 1999, he took his oldest son and oldest daughter to see sites and visit relatives.<sup>(12)</sup> His final trip in 2002, was a religious pilgrimage to Saudi Arabia.<sup>(13)</sup> His plane route took him through Jordan so he stopped to visit his relatives for 3 or 4 days.<sup>(14)</sup> All of his trips have been properly reported to his employer's security officials.<sup>(15)</sup>

All of his immediate family (except the youngest child) had Jordanian passports and were considered Jordanian citizens because he was Jordanian. Those passports are expired and have not been renewed.<sup>(16)</sup> He renewed his in 1999. It expired in 2004.<sup>(17)</sup> In a DSS interview, he said he was willing to renounce his Jordanian citizenship and that he had no intention of renewing his Jordanian passport.<sup>(18)</sup> On December 5, 2005, Applicant took the affirmative action of renouncing his Jordanian citizenship. He mailed a letter stating his renunciation and surrendered his expired passport and sent it to the Jordanian Embassy in Washington, DC.<sup>(19)</sup> The embassy returned his letter and passport and demanded \$2,000 per person/passport to accept and officially cancel each passport.<sup>(20)</sup> He cannot afford \$2,000.00 or a total of \$10,000.00 to send each passport for renunciation. The payments must be mailed to Jordan, not the Jordanian Embassy in the U.S.<sup>(21)</sup>

He has no intention of buying property in Jordan, now or in the future.<sup>(22)</sup> His parents and eight siblings are citizens of and reside in Jordan.<sup>(23)</sup> A ninth sibling lives in the U.S. but is still a Jordanian citizen.<sup>(24)</sup> His parents own a coffee roasting and spice shop.<sup>(25)</sup> His siblings are in private business. None are employed by or dependant on the Jordanian government.<sup>(26)</sup> He talks with his mother once per month, he has no contact with his siblings except when he has been in Jordan, and he never discusses his work with any of them.<sup>(27)</sup>

The Kingdom of Jordan is a constitutional monarchy.<sup>(28)</sup> Jordan has a history of excellent relations with the U.S. Jordan

also is more moderate than its Arab neighbors in allowing persons other than Muslims to practice their faiths, especially the country's Christian minority.<sup>(29)</sup> Jordan is on friendly terms with the United States. The Jordanian Embassy states: "Jordan values its friendship with Congress and is appreciative of the bipartisan support that the Kingdom has seen from Congress over the past several years. Particularly the efforts of Congress and the administration to write off Jordan's debt to the US and to increase assistance to the Kingdom....The Jordanian constitution expresses the importance of human rights in a whole chapter entitled "The Rights and Duties of Jordanians." It safeguards the rights of Jordanians of all origins including minorities, providing that "Jordanians shall be equal before the law. There shall be no discrimination between them with regards to their rights and duties on grounds of race, language, or religion."<sup>(30)</sup>

## POLICIES

"[No] one has a 'right' to a security clearance."<sup>(31)</sup> 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."<sup>(32)</sup> 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."<sup>(33)</sup> Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel 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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.<sup>(34)</sup> 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.<sup>(35)</sup>

Once the Government establishes a its case, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>(36)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(37)</sup> A person who has access to classified information enters into a fiduciary

relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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>(38)</sup> Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

*Guideline B (foreign influence) E2.A2.1.1. (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),*

*Guideline C (foreign preference) E2.A3.1.1. (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).*

## CONCLUSIONS

### Foreign Influence

A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U. S., or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

The government has established its case under Guideline B. Applicant's parents and eight of nine siblings are citizens and residents of Jordan. Foreign Influence Disqualifying Condition (FI DC) 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*) is applicable.

Under the Directive, potentially disqualifying conditions may be mitigated through the application of the "whole person" concept and specific mitigating conditions. When the Government produces evidence raising potentially disqualifying conditions, an Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the conditions.<sup>(39)</sup> The government never has the burden of disproving a mitigating condition.<sup>(40)</sup>

Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. provides (*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 in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*). Applicants must establish: (1) that the individuals in question are not "agents of a foreign power," and (2) that they are not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States.<sup>(41)</sup>

Applicant's brothers, sisters, and parents do not meet the definition of "agent of a foreign power" under 50 U.S.C. § 438(6) and 50 U.S.C. § 1801(b). Similarly, they would not be considered as an "agent of a foreign power" under the more expansive definition adopted by the Appeal Board. The available evidence indicates his brothers, sisters, and parents have no ties to or economic dependence upon the Jordanian government.

The second prong of the test is whether the relatives in question are "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."<sup>(42)</sup> The federal statute, 50 U.S.C. § 1801(a), defines "foreign power" to include: a foreign government; a faction of a foreign nation; an entity openly acknowledged by a foreign government to be controlled by that foreign government; a group engaged in international terrorism; a foreign-based political organization; or an entity directed and controlled by a foreign government.

To determine whether Applicant was "in a position to be exploited by a foreign power," I normally weigh Applicant's connection to his family against his strong ties to the United States. I note that Applicant's wife and children are native-born citizens and residents of the United States, and therefore entitled to the liberties and protection afforded U.S. citizens. His family residing in Jordan present a somewhat greater vulnerability; although they have no connection to or dependence upon a foreign power, they are still under the physical control of the Jordanian government. Applicant's record of successful employment, the fact that Jordan and the U.S. enjoy a good relationship, and that the Jordanian

government respects human rights, make it unlikely that he would be vulnerable to improper influence.

However, as discussed above, in order to apply the second prong of FI MC E2.A2.1.3.1., the Appeal Board requires that applicants affirmatively prove that there is no possibility that anyone would attempt to exploit a foreign relative in the future. Also, the Appeal Board prohibits any consideration of evidence that is not dispositive of the issue. Finally, the Appeal Board finds it irrelevant to this issue whether an applicant is likely to be improperly influenced by a foreign relative or associate. Applying that standard, FI MC E2.A2.1.3.1. does not apply.

Under the Directive, FI MC E2.A2.1.3.3., it may be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant's contact with his siblings has been casual, isolated and infrequent. Although there is a presumption that contacts with family members are not casual, he has seen his family three times in about twenty years. He does not call them or exchange email's with them. I find this to be casual contacts. But he has regular and frequent contact with his mother. This potentially mitigating condition applies only in part.

The "whole person" concept-not the potentially disqualifying or mitigating conditions-is the heart of the analysis of whether an applicant is eligible for a security clearance.<sup>(43)</sup> Indeed, the Appeal Board has repeatedly held that an administrative judge may find in favor of an applicant where no specific mitigating conditions apply.<sup>(44)</sup>

In assessing whether an applicant is a security risk because of his or her relatives or associates in a foreign country, it is necessary to consider all relevant factors. As noted above, ¶¶ E2.2.1, E2.2.2, and E2.2.3 of the Directive specifically require each administrative judge to consider all the facts and circumstances, including the "whole person" concept, when evaluating each individual case. To ignore such evidence would establish a virtual per se rule against granting clearances to any person with ties to persons in a foreign country, contrary to the clear terms of the Directive. "Although the position of an applicant's foreign family members is significant and may preclude the favorable application of FI MC E2.A2.1.3.1., the totality of an applicant's conduct and circumstances (including the realistic potential for exploitation) may still warrant a favorable application of the relevant general factors."<sup>(45)</sup>

One of the "whole person" factors which must be considered is "the potential for pressure, coercion, exploitation, or duress."<sup>(46)</sup> In that regard, an important factor for consideration is the character of any foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. This factor is not determinative; it is merely one of many factors which must be considered. Of course, nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>(47)</sup> The Appeal Board repeatedly warns against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."<sup>(48)</sup> It is well understood that "[t]he United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."<sup>(49)</sup> Distinctions between friendly and unfriendly governments must be made with extreme caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Moreover, even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, friendly nations have engaged in espionage against the United States, especially in economic, scientific, military, and technical fields.<sup>(50)</sup> Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the U.S. through

the applicant. The nature of the foreign government might also relate to the question of whether the foreign government or an entity it controls would risk jeopardizing its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray this country. A friendly relationship is not determinative, but it may make it less likely that a Jordan would attempt to exploit a U.S. citizen through his relatives or associates. <sup>(51)</sup>

It is also helpful to consider Applicant's relatives' vulnerability to exploitation by foreign powers in Jordan. Applicant's eight siblings and parents live in Jordan and are therefore more vulnerable to the foreign powers there.

Most importantly, it is necessary to consider Applicant's vulnerability to exploitation through his relatives. Applicant is a mature individual with almost twenty years of successful employment in this country. He is a U.S. citizen and was educated in this country. Applicant has strong ties to the United States. Because of Applicant's deep and long-standing relationships and loyalties in the U.S., he can be expected to resolve any conflict of interest in favor of the United States. I find the potential for pressure, coercion, exploitation, or duress does not constitute a security risk. <sup>(52)</sup>

I considered carefully the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. I conclude Applicant has mitigated any potential security concerns arising from Applicant's family ties to Jordan.

### **Foreign Preference**

The Government has established its case under Guideline C by showing that Applicant has exercised dual citizenship with Jordan by possessing a Jordanian passport. Therefore, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.2. (*The exercise of dual citizenship*) and E2.A3.1.2.2. (*Possession and/or use of a foreign passport*) apply. The SOR subparagraph 2.c. alleges that Applicant maintains dual citizenship so he can acquire property in Jordan in the distant future. FP DC E2.A3.1.2.6. (*Using foreign citizenship to protect financial or business interests in another country*). He successfully refuted that allegation and FP DC E2.A3.1.2.6. does not apply.

The DoD Money Memorandum <sup>(53)</sup> of August 16, 2000, clarifies DoD policy regarding the possession and/or use of foreign passports. It 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." Under the Money Memorandum, possession and/or use of a foreign passport is not mitigated by reasons of personal convenience, safety, requirements of foreign law, or the identity of the foreign country. Applicant's passport expired in 2004. Therefore, the Money Memorandum does not apply. Notwithstanding, Applicant took the affirmative act of writing a letter renouncing his citizenship and surrendering his expired passport and mailed it via UPS next day air. <sup>(54)</sup> He did this to be absolutely sure he demonstrated a good-faith intention to renounce his citizenship, and the subsequent rejection by Jordan should not be considered against him.

Foreign Preference Mitigating Condition E2.A3.1.3.4. (*Individual has expressed a willingness to renounce dual citizenship*) is applicable. All that is required is an intent to renounce citizenship. The act of mailing his letter and



passport is clear intent to revoke. Accordingly, I find Guideline C for Applicant.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e. For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Christopher Graham

Administrative Judge

1. Applicant's Exhibit C (Amended Answer to Statement of Reasons, dated December 14, 2005) at 1.
2. Government Exhibit 1 (Standard Form 86 (SF 86) *Security Clearance Application*, dated April 8, 2003) at 1.
  3. Tr. at 11.
  4. *Id.* at 20.
  5. *Id.*
6. Government Exhibit 1, *supra*, at 1.
  7. *Id.* at 23-24.
  8. *Id.* at 45.
  9. *Id.* at 34,86.
  10. *Id.* at 51.
  11. *Id.* at 50, 83.
  12. *Id.*
  13. *Id.* at 56-58.
  14. *Id.* at 41.
  15. *Id.* at 45.
  16. *Id.* at 37.
  17. *Id.* at 35.
  18. *Id.*
19. *Id.* at 32-34, 46; Applicant's Exhibit B (Letter Renouncing Citizenship, dated December 5, 2005) at 1-2
20. Applicant's Exhibit F (Translation of Response of Jordanian Embassy to Applicant's Letter ) at 1-4.

21. Applicant's Exhibit D (Applicant's Affidavit, dated January 16, 2006) at 1-2.

22. Tr. at 47, 54-55.

23. Applicant's Exhibit C, *supra*, at 1.

24. *Id.* at 52, 58.

25. *Id.* at 44, 52.

26. *Id.* at 43.

27. *Id.* at 44-45.

28. Applicant's Exhibit A (Embassy of Jordan, *U.S. - Jordan Relations*, December 2005) at 1, 18.

29. *Id.* at 27.

30. *Id.* at 23.

31. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

32. *Id.* at 527.

33. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

34. *Egan, supra*, at 531.

35. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

36. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

37. *Id.*, at 3.

38. *See Egan*; Directive ¶ E2.2.2.

39. Directive, ¶ E3.1.15.

40. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

41. ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004).

42. Directive, ¶ E2. A2. 1.3.1.

43. Directive, ¶ E2.2.3.

44. ISCR Case No. 03-11448 at 3-4 (App. Bd. Aug. 10, 2004); ISCR Case No. 02-09389 at 4 (App. Bd. Dec. 29, 2004).

45. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (footnotes omitted); *accord* ISCR Case No. 03-23259 at 3 (App. Bd. May 10, 2006).

46. Directive, ¶ E2.2.1.8.

47. *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

48. ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

49. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

50. ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

51. Much of this discussion may be found in ISCR Case No. 03-21423 at 7-15 (May 24, 2006).

52. Directive, ¶ E2.2.1.8.

53. Memorandum, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, subject "*Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*," August 16, 2000. It is known administratively as the 'Money emorandum' because it was issued by Arthur L. Money, Assistant Secretary of Defense. It is also known as the ASD C3I Memorandum

54. Applicant's Exhibit B, *supra*, at 2.