

DATE: May 15, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-02583

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Candace Le'i , Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, an Israeli born, former dual citizen of Jordan and the United States, has renounced his Jordanian citizenship to the Jordanian Government and destroyed his Jordanian passport. Because of Applicant's powerful attachment to his wife and four children in the United States and to the United States, itself, neither Applicant's two half-sisters, who are residents and citizens of Jordan, nor his daughter, who is a citizen and resident of Spain, are in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated September 16, 2005, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied. The SOR was based on Foreign Preference (Guideline C) and Foreign Influence (Guideline B) concerns.

Applicant, acting *pro se*, filed a notarized response, dated September 29, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 20, 2006, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice dated February 16, 2006, a hearing was held on March 14, 2006.

At the hearing, Department Counsel offered 9 documentary exhibits (Exhibits 1 - 9) and no witnesses were called. Applicant offered two documentary exhibits (Exhibits A and B) and offered his own testimony. The transcript (Tr) was received on March 23, 2006.

## **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. The SOR contained three allegations, 1.a. through 1.c., under Guideline C, and two allegations, 2.a. and 2.b., under Guideline B. Applicant admitted all of the SOR allegations. At the hearing, Department Counsel made a motion to amend the SOR by adding an additional allegation under Guideline B. The proposed amended allegation, which would be 2.c., would state: "You have a daughter who is a citizen and resident of Spain." This information had been previously known by the Government, but Applicant had no objection, so the SOR was amended to add 2.c. Applicant admitted 2.c. All of the admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the documents, and upon due consideration of that evidence, I make the additional Findings of Fact:

Applicant is 43 years old and is employed as a Network Design Engineer by a United States defense contractor, which seeks a security clearance on his behalf. He received a Master of Science Degree in Information Technology in 2002 from a United States university.

Applicant was born in Israel in 1963, moved to Jordan in 1966 or 1967, and moved to Spain in 1981. He moved to the United States in 1984, where he has lived since that time, and he became a United States citizen in 1999. He is married and he and his wife have four children, with an

additional one on the way. His wife and their four children are solely United States citizens. Applicant has an additional daughter by a previous marriage who is a Spanish citizen and resident.

Applicant's mother and half-brother both live in the United States and are United States citizens.

### **Paragraph 1 (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 indicate a preference for another country over the United States.

Applicant applied for and was issued a Jordanian passport on October 28, 2003, even though he was a United States citizen and had a United States passport.

Applicant testified that in October 2003, Applicant visited Jordan. He exited the United States with his American passport, but when he entered Jordan, he presented both his United States and Jordanian passports. His Jordanian passport was the only one that was stamped by the Jordanian officials. While in Jordan, he became aware that the Jordanian passport was expired. Since this was the passport stamped when he entered Jordan, he was informed that this had to be stamped when he left, but because it was expired, he had to renew it so it could be used. Applicant only used this renewed passport one time to exit Jordan (Tr at 27-29, 51-53).

When Applicant was made aware of the consequences of retaining a foreign passport, he shredded and discarded it (Tr at 70). Applicant testified that he has no intention of reapplying for a Jordanian passport (Tr at 54).

On March 8, 2006, Applicant sent to the Jordanian Consul Office a registered letter in which he renounced his Jordanian citizenship (Exhibit A).

### **Paragraph 2 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant has two half-sisters who are residents and citizens of Jordan. Both are housewives, and neither of these family members, nor their spouses, belong to, or are active with any national government agency of Jordan (Tr at 37-39).

Applicant speaks to his sisters two times a year, and when he visited Jordan in 2003, he saw them both, but he did not stay with them.

Since Applicant came to the United States in 1984, he has traveled to Jordan on two occasions, in 1997 and 2003. He has no plans to travel to Jordan in the future (Tr at 40).

As discussed above, Applicant has a 20 year old daughter from a previous marriage, who is a Spanish citizen and resident. He speaks to her once a month, and he has seen her one time in the last 17 years (Tr at 72-73). He occasionally sends her money, approximately \$1,000 to \$1,500 a year, but he does not support her.

Applicant owns a home in the United States with an estimated value of \$400,000. He also has other assets estimated to be worth \$100,000. He has no other assets outside of the United States, except for an inactive bank account in Jordan, with approximately \$6 in it.

Applicant introduced four positive letters of reference (Exhibit B). His manager stated, "His work ethic moral character and attitude are impeccable." A co-worker said, "[Applicant] has been proven a successful and ethical leader in all his important responsibilities. . . . He is a person that you can rely on"

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2.

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines C and B:

#### **(Guideline C - Foreign Preference)**

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's use of a Jordanian passport after becoming a United States citizen raises serious Foreign Preference (Guideline C) concerns. At the time the SOR was issued, Disqualifying Condition DC (E2.A3.1.2.1.), the exercise of dual citizenship could be argued to apply because he renewed his Jordanian passport, and DC (E2.A3.1.2.2.), possession and/or use of a foreign passport, applied. However, Applicant only renewed his passport and used it one time so that he could exit Jordan. He has subsequently shredded his Jordanian passport and formally renounced his Jordanian citizenship. Mitigating Condition (MC) (E2.A3.1.3.4.), an individual has expressed a willingness to renounce his dual citizenship, is applicable, as Applicant has renounced his Jordanian citizenship. Guideline C is found for Applicant.

#### **(Guideline B - Foreign Influence)**

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. The evidence of two half-sisters, who are citizens and residents of Jordan, and a daughter, who is a citizen and resident of Spain comes within DC (E2.A2.1.2.1.), an immediate family members, or persons to whom the individual has close ties of affection or obligation, are citizens of, or resident or present in, a foreign country. Based on the nature of the overall record and the totality of the evidence, including the lack of government involvement of Applicant's family members, Applicant's powerful attachment to his wife and four children in the United States and to the United States, itself, I have determined that his half-sisters in Jordan and his daughter in Spain do not constitute an unacceptable security risk, and MC (E2.A2.1.3.1.), a determination that the immediate family members, 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 involved and the United States, applies.

After considering all of the evidence of record on this issue, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR, and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would reject it, and would report the incident to the proper authorities.

### FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline B: 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 a security clearance for Applicant.

**Martin H. Mogul**

**Administrative Judge**