

DATE: January 16, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-07858

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 36 year old program manager, who has worked for a defense contractor since 2000. He was born and lived in Jordan before coming to the U.S. on a student visa. He became a naturalized U.S. citizen in 1999, retained his Jordanian passport, renewed it twice, and used it to take annual trips to Jordan. His Jordanian passport does not expire until 2009. He owns a condominium in Jordan valued at \$180,000. His wife is a Jordanian citizen as are his relatives with whom he maintains close contact. Applicant failed to honestly answer four questions on his security clearance application. Applicant failed to mitigate security concerns raised by Guideline C, foreign preference, Guideline B, foreign influence, and Guideline E, personal conduct. 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 July 24, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ 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), and Guideline E (personal conduct) of the Directive. Applicant answered the SOR in writing on August 2, 2006, and elected to have a hearing before an administrative judge. In his answer, Applicant admitted all of the allegations except he denied the allegation in SOR ¶ 2.f. The case was assigned to me on October 12, 2006. A notice of hearing was issued on October 27, 2006, scheduling the hearing for November 16, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered two exhibits for admission in the record and they were marked as Government Exhibits (GE) 1-2. Four exhibits were also offered for administrative notice. There being no objection, Administrative notice was taken and they were marked as Exhibits I-IV. Applicant testified on his own behalf, called one witness, and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on November 29, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful

review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 36 years old, married, has one child, and is expecting a second. He is a program manager who has worked for a defense contractor since 2000. He was previously married in approximately 1994 and divorced in 2000. Applicant was born in Jordan and came to the United States on a student visa in 1988. He received a bachelor's degree in business administration in 1992, a master's degree in business in 1994, and another master's degree in liberal arts in 2000. He received his green card in 1994 through his ex-wife's status. He became a naturalized U.S. citizen in 1999 and obtained a U.S. passport in June 1999. He renewed his Jordanian passport, after becoming a U.S. citizen in December 1999, and subsequently renewed it on September 7, 2004. It will not expire until September 9, 2009. Prior to his hearing Applicant was advise that retaining his Jordanian passport was a disqualifying condition under the "Money Memo."⁽³⁾ At the time of the hearing he continued to hold the passport, but stated he was willing to relinquish it. Applicant is a dual citizen of the United States and Jordan.

Applicant's wife is a citizen of Jordan and resides in the United States with Applicant. She recently obtained a green card and intends on becoming a naturalized U.S. citizen. She entered the United States on a student visa and earned her bachelor's and master's degrees at U.S. universities. Her parents, brother, and sister are citizens and residents of Jordan. Applicant's parents are dual citizens of the U.S. and Jordan, residing with Applicant in the U.S. Applicant has two brothers, one a naturalized U.S. citizen, the other is a Jordanian citizen who resides with his Jordanian wife in the United Arab Emirates. He is a civil engineer.

Applicant has returned to Jordan annually since 1997, and intends to continue to do so in the future. His parents and wife also return annually for a family reunion at his parents' summer home in Jordan. Their home is valued at approximately \$250,000. His mother has eleven brothers and sisters and his father has two living brothers. Applicant has visited them, his brothers, his cousins, nieces and nephews, along with his parents-in-law and other relatives during his annual trips to Jordan. He considers himself close to his family. He communicates with his brothers about once a month, and also on birthdays, holidays, and anniversaries. Applicant's wife is also close to her family residing in Jordan. She speaks with them every Sunday and emails her brother and sister weekly. They also communicate and correspond on holidays, birthdays and anniversaries.

Prior to retiring, Applicant's father was a contractor. Applicant purchased a condominium at a discounted price through his father in a development in which his father was part-owner. He purchased the condominium for \$85,000 and paid cash from his savings. He estimated its current value is \$180,000, due to a fluctuating market. He considered this a business investment and rents the condominium. He receives approximately \$5,000 in rental income annually. He admitted in his answer to the SOR that he maintains his Jordanian passport to protect his ownership interest in his condominium in Jordan.⁽⁴⁾

While attending graduate school, approximately 4 years ago, Applicant became friends with the then Crowned Prince of Jordan.⁽⁵⁾ They were neighbors and Applicant considered him a good friend.⁽⁶⁾ He would see him every couple of weeks.⁽⁷⁾ He has not seen him since the Prince graduated in early 2006.⁽⁸⁾ The Prince returned to Jordan after completing his schooling. Applicant would visit with him again if the opportunity arose.

On his security clearance application (SCA), Question 12 asked if Applicant owned any foreign property, had any business connections, or financial interests? He answered "no" and failed to list he owned a condominium in Jordan. Applicant claimed he interpreted this question to mean he was to list bank accounts in foreign countries.

Question 14 asked him if he had any contact with a foreign government, its establishments, or its representatives, whether inside or outside of the U.S. other than on official U.S. Government business. Applicant failed to list his contact with the then Crowned Prince of Jordan. He claimed he thought because the Prince was not acting as a government official he did not have to list him. This was how he interpreted the question and did not believe it was a "big deal."⁽⁹⁾

Question 16 asked Applicant if he had visited any foreign countries outside of the U.S. on other than official U.S. government orders in the last seven years. He listed he traveled to Jordan in 2003, but failed to list that he made annual trips to Jordan for at least the last seven years. He claimed he misunderstood the question and had no idea why he did
⁽¹⁰⁾

not list his other trips and it was an oversight.

On his SCA, Applicant failed to list that he was terminated from his previous job. He appealed the termination and the case was eventually settled. He admitted he was given a termination letter.⁽¹¹⁾ Applicant's former immediate supervisor testified that when Applicant left the company it "clearly was not voluntary."⁽¹²⁾ Applicant's former supervisor believes him to be a top performer, energetic and ambitious. Applicant was not credible in why he failed to list that he was terminated from his previous job. He claimed he could not recall the terms of the settlement agreement. He claimed he did not know how to answer the question, but did not ask for help.⁽¹³⁾ On his SCA Applicant listed he worked for his former employer from 9/16/1994 until 11/15/2000. He listed he began work for his present employer on 11/16/2000, thereby showing no gap in employment. Applicant admitted these dates are not accurate and he actually ceased working for his former employer sometime in September 2000.⁽¹⁴⁾ He failed to show the gap in employment. Applicant claimed this gap was not intentional. I find his testimony was not credible and he intended to show continuity in employment and thereby not raise questions about his termination. I find Applicant's explanations regarding his failure to answer the other three questions on his SCA correctly, not credible and he intentionally failed to provide accurate and honest information.

Jordan is a constitutional monarchy with executive authority vested in the king and his counsel of ministers.⁽¹⁵⁾ The king signs and executes all laws. He appoints and may dismiss the prime minister, members of the cabinet, parliament, and all judges. He may establish public policy and by decree, approve amendments to the constitution, he declares war and commands the armed forces.⁽¹⁶⁾ Jordan has a large population of Palestinians. It is consistently pro-Western and has had close relations with the United States, but they were damaged by their support for Iraq during the first Gulf war.⁽¹⁷⁾ The United States has provided Jordan economic assistance and helped maintain its stability and prosperity.⁽¹⁸⁾ Although the Jordanian government respected human rights in some areas, its overall record has problems. Examples of human rights violations include, allegations of torture, police abuse and reported mistreatment of detainees, arbitrary arrest and prolonged detention, denial of due process, limited judicial independence, infringement of citizens' privacy rights, and others.⁽¹⁹⁾ Evidence exists of terrorist elements in Jordan.⁽²⁰⁾ The threat of terrorism remains high in Jordan.⁽²¹⁾

To gain entry into Jordan, a passport and visa are required. Jordan issues visas for a fee at most international ports of entry.⁽²²⁾ Although no longer subject to immediate conscription, all U.S.-Jordanian dual national males under the age of 37 are required to register for service in the Jordanian military. The government of Jordan treats U.S.-Jordanian dual citizens as Jordanian citizens. Prior to the law being change, that a male is no longer subject to immediate conscription, Applicant paid \$10,000 as a waiver to military duty.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²³⁾ The government has the burden of proving controverted facts.⁽²⁴⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁵⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the

case against him.⁽²⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁷⁾

No one has a right to a security clearance⁽²⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³⁰⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³¹⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline C-Foreign Preference is a security concern because 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.

Guideline B-Foreign Influence is a concern because 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 obligations are not citizens of the United States or 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*) and FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*) and FP DC E2.A3.1.3.6 (*Using foreign citizenship to protect financial or business interest in another country*) apply. Applicant is a dual citizen of Jordan and the U.S. After obtaining his U.S. citizenship he exercised his dual citizenship status by twice renewing his Jordanian passport and using it to enter Jordan on his annual trips. He continues to retain the passport in his possession, but stated he was willing to relinquish it, but had not done so. The possession and/or use of a foreign passport is an exercise of dual citizenship. Applicant admitted in his answer to the SOR that he uses his foreign citizenship to protect his ownership in his condominium in Jordan. The above disqualifying conditions apply.

I have considered all the mitigating conditions and especially considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), and conclude it does not apply. Applicant affirmatively applied to renew his Jordanian passport after becoming a U.S. citizen and obtaining a U.S. passport. He has used his Jordanian passport to travel to Jordan since becoming a U.S. citizen. Applicant's affirmative actions are an exercise of dual citizenship and are not based solely on his parents' citizenship. In accordance with the "Money Memo" Applicant's retention of his Jordanian passport precludes him from obtaining a security clearance. In addition, his maintenance of his dual citizenship to protect his property interests in Jordan, is also an exercise of his Jordanian citizenship.

Based on all the evidence, 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) and FI DC E2.A2.1.2.8 (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. Applicant's wife, parents-in-law, brother and sister-in-law and his wife's two siblings are immediate family members who all are citizens of Jordan. All except his wife and brother and sister-in-law reside in Jordan. Obviously Applicant is close to his wife and he is also close to his family and in-laws. He visits them all annually when he returns to Jordan. He communicates with all of them regularly and on special occasions. Therefore, I find FI DC E2.A2.1.2.1 applies to his family and in-laws as well as his wife. There is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of the person's spouse.⁽³²⁾ An immediate family includes spouse, father, mother, sons, daughters, brothers, and sisters.⁽³³⁾ He and his wife both keep in contact with her parents on a regular basis and it is likely to increase with the birth of their second child. He and his family return annually to Jordan for a summer family reunion with immediate and extended family. There is potential for foreign influence due to Applicant's close family ties with his relatives that are citizens and residents of Jordan. Applicant also owns a condominium in Jordan that is valued at approximately \$180,000. He receives rental income from the property. I find his business investment in Jordan is substantial and could make him vulnerable to foreign influence. FI DC E2.A2.1.2.8 applies to his substantial financial interest in Jordan.

I have considered all of the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (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), FI MC E2.A2.1.3.2 (Contacts and correspondence with foreign citizens are casual and infrequent) and FI MC E2.A2.1.3.5 (Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities) and I conclude they do not apply. Applicant's family and in-laws are not agents of a foreign power since there was no information offered that they are engaged in intelligence work.⁽³⁴⁾ The question remains whether the relatives are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his family and in-laws versus the United States. The disqualifying condition requires that a foreign power would exploit its citizens or residents in such a way as to have Applicant act adversely to the interests of the United States. A factor to consider, while not determinative, is the character of the foreign power and entities within the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. Although the government of Jordan historically has had close ties with the U.S., it is still a country that has terrorist activities and factions. Its human rights record is a serious concern. Thus I find FI MC E2.A2.1.3.1 does not apply.

Applicant is very close to his family in Jordan. He communicates with them regularly and on special occasions. He travels annually to Jordan to visit all of his family, immediate and extended. His relationships are not casual nor infrequent. Applicant and his wife maintain more than casual and infrequent contact with her parents and siblings and relatives in Jordan. Obviously, Applicant has a live-in relationship with his wife who is a citizen of Jordan. He speaks with his Jordanian relatives regularly. Applicant's wife speaks regularly with her parents and siblings. Applicant and his wife's ties to their families are more than casual and infrequent. Hence, FI MC E2.A2.1.3.1 does not apply. In addition, his business interest in a condominium is substantial based on the value of the property and the continuing rental income he receives. Therefore, FI MC A2.1.3.5 does not apply.

Based on all the evidence, I have considered Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). Applicant falsified four questions on his SCA. His explanations that he misinterpreted, misunderstood or it was an oversight and his actions were not intentional were not credible. Applicant is a highly educated individual and the likelihood that he did not understand the questions is improbable. Despite being fully aware that he had received a termination letter from his employer, he failed to minimally raise the issue on his SCA. He also failed to list the gap in

his employment which supports his intention to not disclose the issue to the government. He failed to provide a credible explanation for not revealing all of his trips to Jordan or his relationship with the Crowned Prince. I find his actions were intentional and with the intent to deceive.

I have considered all of the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.A.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) and conclude none apply. Applicant deliberately falsified four questions on his SCA. He did not correct the falsifications before being confronted with the facts. He failed to provide any indication of positive steps he has taken to reduce his vulnerability to coercion and exploitation. He failed to provide a reasonable explanation for his failure to list his job termination and the other relevant information requested to make a determination about his security clearance eligibility.

The Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and specifically Applicant's age and education. I considered that Applicant retains a Jordanian passport and used it frequently after becoming a U.S. citizen. I considered his substantial financial interests and close immediate and extended family ties to Jordan. I also considered Applicant's credibility and demeanor while testifying. I considered his explanations for his failure to answer the SCA correctly. After a careful review of all the evidence, I find Applicant failed to mitigate the security concerns under Guideline C, foreign preference, Guideline B, foreign influence, and Guideline E, personal conduct. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines C, B and E are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: Against the Applicant

Subparagraph 3.d: Against the Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello

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 accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money emorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport."
4. Answer.
5. Due to political reasons he no longer is the crowned prince, but continues to be part of the monarch of Jordan. His half brother now reigns as the King of Jordan.
6. Tr. 74.
7. *Id.*
8. Tr. 72-73.
9. Tr. 80-81.
10. Tr. 83-84.
11. Tr. 92-94.
12. Tr. 111.
13. Tr. 99.
14. Tr. 102-103.

15. Administrative Note I at 2, U.S. State Department Background Note: Jordan, September 2005; Administrative Note II at 1, U.S. State Department Country Report on Human Rights Practices, arch 8, 2006.
16. *Id.*
17. *Id.* at 4.
18. *Id.* at 5.
19. *Id.*.
20. U.S. State Department Country Reports on Terrorism 2005 at 136.
21. U.S. State Department Consular Information Sheet, September 26, 2006 at 2..
22. *Id.*
23. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
24. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
25. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
26. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
27. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
28. *Egan*, 484 U.S. at 531.
29. *Id.*
30. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
31. Executive Order 10865 § 7.
32. ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002).
33. Directive E2.A2.1.3.1.
34. *See*, 50 U.S.C. secs. 435, 438, and 1801 (b), *See also*, ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) for a broader definition of "agent of a foreign power."