

DATE: March 28, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-10607

**ECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's mother and siblings are citizens and residents of Jordan. He also has a brother who resides in the United Arab Emirates. Under the specific facts in evidence herein, the government's security concerns have been mitigated. Clearance is granted.

**STATEMENT OF THE CASE**

On November 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to foreign influence security concerns.

On December 19, 2005, Applicant answered the SOR and requested a hearing. On September 18, 2006, I was assigned the case. On September 18, 2006, a Notice of Hearing was issued for the hearing held on October 19, 2006. On October 31, 2006, DOHA received a copy of the transcript (Tr.).

**FINDINGS OF FACT**

The SOR alleges foreign influence security concerns. Applicant admits to the following: his mother, brothers and sisters are citizens and residents of Jordan, except one brother who resides in the United Arab Emirate (UAE). He served mandatory military service in the Royal Jordanian Air Force from 1985 to 1987. From 1987 until 1990, Applicant worked for the Royal Jordanian Airlines. Twenty-three years ago, Applicant received a small inheritance from his father. In the last 15 years, he has visited Jordan only three times, 1994, 1998, and 2004. The last trip, the only one since becoming a naturalized U.S. citizen, was to visit his sick mother. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact.

Applicant is a 47-year-old flight line mechanic who has worked for a defense contractor since February 2003, and is seeking to obtain a security clearance. Applicant is regarded by those who know him as very conscientious, dependable, reliable, dedicated, hard-working, honest, trustworthy, responsible, courteous, and a family oriented person willing to assist others. (App Ex A - G) He is an outstanding asset to his job and a team player. (App Ex J) Having been a flight line mechanic for 20 years, Applicant has learned "to do the right thing and the honest thing, the exact thing." (Tr. 30)

Applicant was born in 1958 in the Kingdom of Jordan (Jordan)--a constitutional monarchy--whose interests are not hostile to the United States. In 1978, Applicant--then age 20--came to the U.S. to obtain better educational opportunities. He came on a student visa to attend flight school. In 1982, he was granted permanent resident alien status. In April 1999, upon completing the required immigration and naturalization citizenship process, Applicant became a naturalized United States citizen. At that time he took his oath of allegiance and was granted his new citizenship.

Since becoming an American citizen, Applicant has exercised the rights and privileges, and performed the responsibilities, of a citizen of the United States. He obtained, and used, a United States passport. Since becoming a naturalized U.S. citizen, he has not accepted any benefits from Jordan and has not used his Jordanian citizenship to protect financial or business interests in Jordan.

In July 1982, he married a U.S. citizen and now has three children ages 22, 16 and 6. They all reside in the U.S. His oldest son is in college, his second son is in high school, and his youngest is in kindergarten. Applicant's first son was born in Jordan when Applicant was there performing his mandatory military service. Since Applicant was married to a U.S. citizen, this son, as well as his two other sons, is a U.S. citizen. Applicant's two youngest sons were born in the U.S.

In 1982, Applicant's father died. His mother--now age 80--a widow and former homemaker, is a citizen and resident of Jordan. Applicant has eight siblings: five brothers and three sisters who are Jordanian citizens. All live in Jordan except for one brother who lives in the United Arab Emirates (UAE). In 1994, Applicant last saw his brother who lives in the UAE. (Tr. 52) This was the only time he has seen this brother in the past 30 years. (Tr. 32) Applicant last talked to his mother by telephone six month ago. (Tr. 33) He does not talk to his siblings unless they happen to be at his mother's when he calls. He has never sent or received letters or emails from either his mother or his siblings. (Tr. 50)

His brother living in the UAE is an inspector for the fire department. Another brother works for the water department and another was studying to be a lawyer. One sister is a retired school teacher and the other two are housewives. (Tr. 55) One of his sisters is married to a school teacher, another to a surveyor, and the last to a military member. He last saw his siblings in 2004 when he visited his mother. (Tr. 37)

When his father was alive, he owned a small general store, which did not include real estate, and an interest in a bus company. Both are still in business. The bus company is "barely making enough money to support the maintenance on the buses." (Tr. 59) When his father died, his father's estate was divided equally between Applicant, his mother, and his eight siblings. In 1978, Applicant last saw the businesses which are run by his brothers. (Tr. 57) Applicant does not participate in the management or operation of the businesses and has never received any income or dividends from the businesses.

In 1985, Applicant returned to Jordan to serve his two years of obligatory military service. He worked on fuel tanks and air frames for the Royal Jordanian Air Force and was paid approximately \$50 per month. In 1987, he completed his mandatory service and obtained a job with the Royal Jordanian Airlines. He worked for the Royal Jordanian Airlines until 1990 when he returned to the U.S. Applicant spent the month of August 1998 in Jordan. In 2004, he also visited his mother in Jordan traveling on his U.S. passport.

In 1996, Applicant was release from work due to an unanticipated slowdown in the company's workload. (App Ex K) From January 2000 until December 2000, Applicant was laid off from work due to the company's lack of work. (App Ex H)

Applicant owns three houses in the U.S. He and his family live in one and he is repairing the other two to be used for rental income. (Tr. 60) The fair market value of the three houses is \$300,000. He has \$17,000 in his company retirement program. (Tr. 61)

I take administrative notice of the following facts: although Jordan, a constitutional monarchy, opposed the U.S. position regarding the war in Iraq, it has consistently followed a pro-Western foreign policy and has traditionally maintained close relations with the U.S. While Hamas, an Islamic extremist group, operates in Jordan and elsewhere in the Middle East, there is no evidence that the government has assisted the group or concurs in its actions. Department Counsel acknowledges that there is no evidence Jordan is active in espionage against the U.S.

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline B, foreign influence.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(2)</sup>

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure. Applicant's mother and eight siblings are citizens of Jordan. All live in Jordan except one brother who lives in the UAE. Disqualifying Condition (DC) 1 (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*) applies.

It is uncontroverted that Applicant's mother and eight siblings, persons to whom he has close ties of affection, are citizens and residents of Jordan, and one sibling a citizen of Jordan, resides in the UAE. Those simple facts, standing alone, are sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. [\(3\)](#)

Family ties with persons in a foreign country does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. [The administrative judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.](#)

[Applicant does not maintain regular contact with his family. He last visited Jordan in 2004, at which time he last saw his mother and some of his siblings. This was his only visit after becoming a U.S. citizen. This was the last time he spoke with any of his siblings. He last talked with his mother six months ago. He does not exchange letters or emails with his mother or siblings.](#)

[I have considered all the mitigating conditions and specifically 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\*\), and conclude it does not apply. Applicant's two brothers are low-level government employees. One works for the fire department and the other for the water department. Additionally, his brother-in-law is in the Jordanian military, who's rank is unknown.](#)

[I have considered FI MC E2.A2.1.3.2. \(\*Contacts and correspondence with foreign citizens are casual and infrequent\*\), and conclude it does apply even though there is a rebuttable presumption that a relation with a mother and siblings is not casual or infrequent. Having last talked with his mother six months ago, Applicant does not maintain close or regular contact with his mother or siblings.](#)

[Even if this mitigating factor is inapplicable, whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. 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 a person should be viewed 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.](#)

[In assessing whether an applicant is vulnerable to exploitation through relatives in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Jordan is pro-Western and has close relations with the U.S. There is no evidence Jordan is active in espionage against the U.S. It is important to consider the vulnerability to duress of Applicant's relatives in Jordan. Applicant's mother is a widow and former homemaker. There is no evidence she or his siblings have the means or the power to leave the country. Under these circumstances, there is some opportunity for adverse influence against Applicant's relatives in Jordan.](#)

[Applicant served two years of mandatory military service with the Royal Jordanian Air Force. His service ended nine years before he became a U.S. citizen and 16 years before the hearing. It is not a security concern for a foreign citizen to serve in a foreign military. Foreign Preference MC 2 \(E2.A3.1.3.2. \*Indicators of possible foreign preference \(e.g., foreign military service\) occurred before obtaining United States citizenship\*\) applies to his mandatory foreign military service. I find for Applicant as to SOR 1.d.](#)

Following his mandatory military service, Applicant worked as mechanic for the Royal Jordanian Airlines. Again, this service occurred before he became a U.S. citizen. It is not a security concern for a foreign citizen to work for a foreign company before that person becomes a U.S. citizen. I find for Applicant as to SOR 1.e.

Twenty-three-years ago, Applicant received a 1/9th interest in his father's estate. Since inheriting his interest, Applicant has never received compensation from that interest. Applicant is not involved in the management of the store or the bus company. The bus company only makes enough money to maintain the buses. Applicant owns a home in the U.S., and two other houses, which he is repairing to use as rental property. The fair market value of his real estate in the U.S. is \$300,000. He has a retirement fund through his company in the U.S. All of his financial accounts are in the U.S. MC 5 (E2.A2.1.3.5. *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) applies. I find for Applicant as to SOR 1.f.

Applicant is a naturalized U.S. citizen, and has lived in this country since 1990. All his immediate family members, including his wife and sons, live in the U.S. and are citizens. The vast majority of his assets are in this country. He receives no income from his 1/9th share in the businesses in Jordan. He has worked for a defense contractor for several years. Applicant has limited connection to his relatives in Jordan and has significant ties to the United States. He has made only one trip to Jordan since becoming a U.S. citizen. Based on the nature of the overall record and the totality of the evidence, Applicant's significant attachment to his wife and children in the United States and to the United States, itself, I have determined that his mother and siblings, their citizenship and residency status do not constitute an unacceptable security risk. Based on the totality of the evidence in this case, and Applicant's evidence of extenuation and explanation that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided for 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 Foreign Influence (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

Subparagraph 1.f 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. Clearance is granted.

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**Claude R. Heiny**

**Administrative Judge**

**1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.**

**2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15**

**3. ISCR Case No. 98-0419 (April 30, 1999) at p.5.**