



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
-----)
SSN: -----) ADP Case No. 06-24599
-----)
Applicant for Public Trust Position)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: Khaja M. Din, Esquire

March 27, 2008

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted his Questionnaires for Public Trust Position (SF 85P), on May 30, 2003, and again on February 16, 2005. On July 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines C and B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 6, 2007, and submitted a revised Answer on October 1, 2007. He requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on November 19, 2007, and I received the case assignment on November 27, 2007. A Notice of Hearing was issued the same day, setting the hearing for December 12, 2007. Applicant retained an

attorney, who sought a continuance. I granted Applicant's continuance until not later than February 28, 2008, in order for his counsel to be available. DOHA issued a second Notice of Hearing on January 25, 2008, setting the hearing for February 12, 2008, at a particular location. The location had to be changed, and an Amended Notice of Hearing was issued January 31, 2008, setting the hearing again for February 12, 2008. I convened the hearing as scheduled on that day.

The government offered Exhibits (Ex.) 1 through 4, which were received without objection. Applicant testified and submitted Exhibits A through G, without objection. I granted Applicant's request to keep the record open until February 26, 2008, to submit additional matters. On that date, he submitted Exhibits H through M, without objection. The record closed that day. DOHA received the transcript of the hearing (Tr.) on February 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Jordan and the Palestine Territories. (Tr. at 15, 16.) The request and the attached documents were admitted into evidence and were included in the record as Hearing Exhibit 4. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated October 1, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.c, and ¶¶ 2.d of the SOR. He denied the factual allegations in ¶¶ 2.a, 2.b, and 2.c of the SOR. He also provided additional information to support his request for eligibility for a public trust position.

Applicant is 37 years old, married with four children born in the United States, and has worked for the same defense contractor for the past 15 years. Applicant came to the United States in 1989 at the age of 18, and has spent the last 19 years here. During that time he obtained an Associate's Degree from college, been gainfully employed continuously, married an U.S. citizen, and purchased a home, a four-unit apartment house, and 25 acres of farm land. Applicant has no property or economic interests in Jordan. (Tr. 19-24, 33, 45, 48; Exhibits 1, A, F, G)

Applicant was born in Jordan, as were his four brothers. His parents lived there until 2003, when they moved to the United States to be near Applicant. They rent an apartment in the same town in which Applicant lives. Applicant's parents intend to become U.S. citizens, and will submit their application in October 2008, when they are eligible to do so. Applicant has three living brothers. One lives in the United States, near Applicant, in his own apartment. The two other brothers live in Sweden, having immigrated there in 2007. One of these brothers used to work for the Palestinian

Authority in an economic development position. He no longer works for that organization. One other brother died in 1999 in an auto accident in India. Applicant traveled to Jordan in 1999 for the funeral. Applicant has a cousin in the United States, who is a U.S. citizen. (Tr. 34-36, 42, 43, 52-57; Exhibits 1, 3, I-M)

Applicant had a Jordanian passport, issued on October 13, 1998, and expiring on October 12, 2003. He has not renewed that passport. On February 22, 2008, Applicant surrendered that passport to his employer, who shredded it and disposed of the residue. Applicant did not intend to renew that passport, though he made contrary statements in interrogatories because he thought his loyalty to the United States was in question. At that time, he made a flippant response. Applicant is willing to renounce his Jordanian dual citizenship. Applicant has a U.S. passport, issued in January 2002, and expiring in January 2012. (Tr. 32, 40, 57; Exhibit 2)

Applicant traveled to Jordan in 2000, on a family vacation. He has not returned to Jordan since then, and does not intend to do so in the future. His family now lives in the United States and Sweden, and it is too expensive to take his immediate family to Jordan. Applicant has no contact with any uncles, aunts, or cousins who may still be living in the Middle East. (Tr. 39, 56, 57, 66)

Applicant's supervisors evaluate him as a valued employee whose performance exceeds expectations constantly. They consider him as exercising sound judgment in his positions with his employer as he has been promoted over the term of his employment. They trust his work performance. Applicant takes courses constantly in information technology to improve his knowledge and capabilities in his employment. (Tr. 28, 29; Exhibits B - G)

I take administrative notice of the following facts. Jordan is a Middle Eastern country with a constitutional monarchy and a developing economy. It has a pro-western foreign policy and has had close relations with the United States for over four decades. Jordan's human rights practices have some problems, including prolonged detention, denial of due process, and some restrictions of freedom of speech, press, assembly, and other human rights. Jordan does aggressively pursue terrorists, and cooperates with the United States in fighting international terrorism. I also take administrative notice of the Palestinian Authority as the legitimate representative of the Palestinian people who live in the Gaza Strip and the West Bank area of the former British League of Nations and United Nations mandate area known as Palestine at the eastern end of the Mediterranean Sea. There are two main political parties within the Palestinian territory, Fatah and Hamas. Fatah is a secular political party and the largest party of the two. Hamas combines Palestinian nationalism with Islamic fundamentalism, and wages an intermittent terrorist campaign to undermine the Palestinian peace process. (Exhibit 4)

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for

. . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant's suitability for a public trust position, the Administrative Judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that 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." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The trustworthiness concern related to the guideline for Foreign Preference is set forth in AG ¶ 9, "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."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. The one disqualifying condition applicable in this case is:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;

Applicant had a Jordanian passport, and dual Jordanian - United States citizenship. He also has a U.S. passport. The Jordanian passport expired in October 2003, and was not renewed.

AG ¶ 11 provides conditions that could mitigate security concerns. There are three mitigating conditions which are applicable here:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant had a Jordanian passport, but it was destroyed in February 2008, by his employer at his request. Applicant does not intend to obtain another passport, either by renewal of the older passport, or by application for new passport. His family no longer lives in Jordan or Palestine, and he does not desire to return to Jordan for any reason. His dual citizenship with Jordan was based on his parent's citizenship and his birth there. He expressed a willingness at the hearing three times to renounce his Jordanian citizenship. Applicant has lived in the United States longer than he lived in Jordan. His wife and children are U.S. citizens by birth. He owns three parcels of real estate in the United States. These three factors make his connection to the United States exceedingly strong. He has no connection to Jordan now other than his birth.

Guideline B, Foreign Influence

The trustworthiness concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The one disqualifying condition applicable is:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

Applicant's parents are resident aliens in the United States, as is one brother of his. The two remaining brothers are residents of Sweden since 2007. He has frequent contact with his parents who live in the same community he does. He has frequent contact with his one brother, who also lives in the same community. His two brothers in Sweden he has more limited contact with because of the distance from them. All are citizens of Jordan or Palestine. One of his brothers in Sweden did work for the Palestinian Authority until moving to Sweden. Applicant made two trips to Jordan, one in 1999 for his brother's funeral, and in 2000 with his wife and children on vacation to visit his family.

AG ¶ 8 provides conditions that could mitigate security concerns. The three mitigating conditions applicable are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's immediate family members no longer reside in Jordan or Palestine, but rather in the United States and Sweden. They retain, for the time being, their Jordanian or Palestinian citizenship until they can become citizens of the United States, or Sweden in the situation of his two brothers living there. There is no conflict of interest between Applicant, his job, and his family loyalties. Applicant's loyalty to the United States is very strong because he has lived over half his life here, his family is here, and his financial and emotional investments are in the United States alone. He has no loyalty to Jordan or Palestine. Applicant will not be placed in a position of having to choose between the interests of the United States and any foreign group or government. Furthermore, his contact with his brothers in Sweden is infrequent, though not casual because of the family relationship, but Sweden is not a threat to the United States to involve exploitation or influence upon Applicant.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The conduct involved here is his family's foreign birth status, former residence in Jordan and Palestine, and Applicant's two trips to Jordan in 1999 and 2000. All those facts have changed in the past four years. Applicant has not traveled to Jordan for the past eight years, and does not intend to do so in the future because none of his immediate family live there anymore. (See AG ¶ 2(a)(1).) Applicant was an adult, married with children, when the events occurred forming the basis of the SOR. (See AG ¶ 2(a)(4).) He willingly retained his Jordanian passport after it expired, but also obtained a U.S. passport after becoming a U.S. citizen. Finally, in 2008, he destroyed the expired Jordanian passport. (See AG ¶ 2(a)(2).) His parents and siblings no longer residing in Jordan or Palestine, there is little likelihood of pressure, coercion, exploitation, or duress. (See AG ¶ 2(a)(8).) Between 2003 and 2008, the events and factors alleged in the SOR have all changed because Applicant's family moved out of Jordan and Palestine, and he no longer has a Jordanian passport.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. I conclude the foreign preference and foreign influence trustworthiness concerns for Applicant. I conclude the "whole person" concept 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, 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
Subparagraph 2.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

PHILIP S. HOWE
Administrative Judge