

DATE: October 26, 2007

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-26054

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 29 years old, unmarried, and works as an electrical engineer for a defense contractor. He and his family come from the Middle East, specifically Jordan. Three brothers and Applicant came to the United States over the past 20 years to obtain an education, to live, and to work. Applicant mitigated the foreign preference and foreign influence security concerns. Clearance is granted.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 16, 2007, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on March 28, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on July 17, 2007. On August 8, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government and the Applicant submitted exhibits that were admitted into evidence. I left the record open to allow Applicant to submit additional exhibits. Those exhibits were sent and received at DOHA within the allowed time period. The Government had no objection to them, and I admitted them into evidence as Exhibits C through F (Tr. 66). DOHA received the hearing transcript (Tr.) on August 27, 2007.

## **PROCEDURAL MATTERS**

Department Counsel requested administrative notice of the facts in Exhibit 2. Department Counsel also provided supporting documents to show the basis for the facts in Exhibit 2. Applicant had no objection to administrative notice of the facts in Exhibit 2.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3<sup>rd</sup> Cir. 1986). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. *See* Stein, Administrative Law, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). I took administrative notice of various facts derived from Ex. 2 as indicated under the subheadings “Jordan,” “Saudi Arabia,” and “Kuwait” of this decision.

The Government moved to amend the SOR with two amendments. Applicant did not object to either amendment, so I granted them both. The first amendment was to add Subparagraph 2.e under Guideline B, the language, “e. You traveled to Jordan in 2000.” (Tr. 7) The second amendment was to change the language in Subparagraph 2.c., to read, “One of your sisters is a citizen of Jordan and a resident of Saudi Arabia.” (Tr. 104, 105)

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

## **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. Applicant denied the Paragraph C and B security concerns, and denied Subparagraph 2.c. of the SOR. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 29 years old, unmarried, and the youngest of eight children. He was born in Kuwait. He immigrated to the United States in 1998 to attend college. He completed his bachelor's and master's degrees in engineering in the United States, graduating with his masters degree in 2006. He became a U.S. citizen in 2004. Applicant's parents sent him and his brothers to the U.S. to be educated. They and his brothers paid for Applicant's college and advanced degree. Applicant does not own any property outside the United States, and rents an apartment in the city in which he works. None of his family members know the type of work he does, because he tells them he works for a power supply company as an electrical engineer. (Tr. 25-28, 30, 45-48, 74, 75, 84; Exhibit 1)

Applicant has seven older siblings:

The oldest brother lives in Kuwait and has dual Jordanian/Canadian citizenship. This brother always worked for private engineering companies. Applicant speaks with this brother only on holidays, and has not spoken with him in 2007. They do have infrequent email communications with each other.

Applicant's second oldest brother lives in the United States, is a U.S. citizen, owns his home, and has a business. He is a married and has four children. His wife came from Jordan, but is also a naturalized U.S. citizen.

The third oldest brother is a Canadian resident and citizen, and also is a Jordanian dual citizen. Applicant talks to him about every three months. His wife is a native-born Canadian. He has two children, and has not returned to Jordan since he married in Canada.

Applicant's fourth brother lives in the United States, and is a naturalized citizen. His children were born in the United States. The fourth brother traveled to Jordan about four years ago. The fifth brother also lives in the United States and is a naturalized citizen. His wife is from Jordan originally. They have three children.

Applicant also has two sisters. One sister is a citizen resident of Jordan. She is married to a man in the import and export business in Jordan. They have three children. Applicant saw her in 2000 on his trip to Jordan, and he speaks with her once or twice a year. She has never been to the United States. He also visited with her once a week when he was working in Jordan in 2006 on assignment from his employer. He has not had contact with her since his return from Jordan in March 2007.

The youngest sister is a citizen of Jordan residing with her family in Saudi Arabia. Her husband is an electrical engineer. Applicant speaks with this sister once or twice a year. He last saw this sister in the summer of 2006 in Jordan. (Tr. 31-33, 51-74, 105; Exhibit 1)

Applicant's parents live in Jordan. They have U.S. "green cards," and have had the cards since the 1970s. They travel to the United States annually to spend four or five months with Applicant and his three brothers who live here. When they are in the United States, Applicant visits with them frequently. He speaks with them once a week when they are in Jordan. (Tr. 26-28, 27, 50, 75, 76, 79, 88; Exhibit 1)

Applicant traveled to Jordan to visit his parents in 2000 for three months, taking his niece and nephew with him. On that trip he used his Jordanian passport. His next trip to Jordan was in August 2006, when his employer sent him to work in Jordan until March 2007, pursuant to a technical assistance contract with the Jordanian armed forces. He obtained advance approval recorded on a company form for that trip. He also signed the necessary export compliance and request forms, as required by law. On that trip he used only his U.S. passport. Applicant is recognized by Jordanian officers and other personnel who work with Applicant's employer on the contract when they saw him in the plant in the United States and on site in Jordan as someone who originally came from Jordan and speaks Arabic, so they feel comfortable with him. Applicant has no present plans to travel to Jordan for business or family visits. On his trip in 2006, he visited with his parents three or four times a week. (Tr. 21, 66-68, 72, 77, 78, 90-93; Exhibits 1, A-F)

Applicant has a Jordanian passport. He renewed it on June 9, 2003, at the request of the U.S. immigration authorities so he would have a current passport before Applicant took his citizenship exam and became a U.S. citizen. It expires on June 9, 2008. Applicant does not use the Jordanian passport now that he has a U.S. passport. After retrieving the Jordanian passport from one of his brother's house, he surrendered the Jordanian passport to his employer's security officer, who put it in Applicant's security file. If Applicant were to reclaim that passport, the employer would make an entry on the JPAS system of that action. Since becoming a U.S. citizen, Applicant only uses the U.S. passport for travel. (Tr. 23, 77, 78, 82-86, 89; Exhibit B)

Applicant has Jordanian citizenship along with his Jordanian passport. Applicant expressed a willingness to renounce his Jordanian citizenship. He has read in the Jordanian newspapers the lists of persons who have renounced their Jordanian citizenship. Applicant is of the belief that such a renunciation would make him an enemy of Jordan in the eyes of Jordanian officials, including those to come to his employer's plant. Applicant is concerned that because his company has a contract to do work for Jordan, if he renounces his citizenship he will be put in a difficult position. If there is no need to renounce it now, he would prefer not to do so, so he can continue to work on that contract for his company. Applicant also told the Government investigator that he was willing to renounce his Jordanian citizenship. (Tr. 23, 85-94)

Jordan is a small, Middle Eastern country governed by a constitutional monarchy. It has a pro-Western foreign policy, and has had close relations with the United States for more than forty years. Torture, arbitrary arrest, prolonged detention, overcrowded prisons, denial of due process, and restrictions on freedom of speech are Jordanian human rights problems. Despite governmental efforts against terrorism, the threat posed by terrorists remains high in Jordan. Terrorists target U.S. interests to undermine U.S. national security interests. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (Exhibit 2)

Saudi Arabia is a monarchy with a consultative council appointed by the monarch. That council came into existence in 1992. The United States and Saudi Arabia share a common concern

about regional security, oil exports and imports, sustainable development, and counter-terrorism efforts. There are some concerns about human rights in Saudi Arabia, including abuse of prisoners, incommunicado detentions, restrictions on freedom of speech, press, peaceful assembly and association, religion, discrimination against women and minorities, and suppression of worker's rights. Islamic Law governs the country. (Exhibit 2)

Kuwait is a constitutional hereditary emirate. It has an elected legislature. Kuwait has some human rights issues, including maltreatment of prisoners, unlawful deprivation of life, incomplete judicial independence, restricted freedoms of press, speech, assembly, association and religion, corruption, and human trafficking. Kuwaiti citizens constitute only 34% of the population of 2.9 million people. The citizens have a generous social welfare system financed by oil revenues. Kuwait condemned terrorism in various public forums, changed its laws on money laundering, and made other changes to combat terrorism. However, the risk of a terrorist attack in Kuwait remains high because the Kuwaiti government is reluctant to confront domestic extremists, and supporters of terrorism active in Iraq and Afghanistan. Kuwait lacks strong legal provisions to combat conspiracies to commit terrorism. In 2006, Kuwait opened its World Moderation Center to combat terrorism and promote moderation among Muslims through education, training, international dialogue, and research. (Exhibit 2)

Applicant's co-workers, friends, and former supervisors submitted letters on his behalf. Applicant is regarded by them as hard-working, dependable, smart, conscientious, cooperative, and a team player. They also regard him as a man of integrity and honesty. (Tr. 24; Exhibit B)

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (See Directive, Section E2.2.1. of Enclosure 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 condition 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 other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

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. 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. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

Guideline C: The Concern: 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. ¶9

Guideline B: The Concern: 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. ¶6

## CONCLUSIONS

**Foreign Preference:** Applicant became a U.S. citizen in 2004. He holds a current Jordanian passport. It remains current until June, 2008. He has dual citizenship with Jordan.

The Government established a *prima facie* case under this guideline. The Disqualifying Conditions (DC) that could raise a security concern and be disqualifying are the exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen, to include but not be limited to possession of a current foreign passport. ¶10.a.1.

Applicant was born in Kuwait and his parents live in Jordan. Applicant expressed a willingness to renounce his dual citizenship, both at the hearing and to the Government investigator. Before he became a U.S. citizen, Applicant obtained a renewal of his Jordanian passport in 2003, when that passport was about to expire. He contends the U.S. immigration personnel told him to renew the Jordanian passport so he would have a valid passport before the final decision and action on his application for U.S. citizenship. He has used only the U.S. passport since becoming a U.S. citizen. He surrendered the Jordanian passport to his employer's security officer for holding. Applicant did not have possession of that passport before he surrendered it, because he had one of his brothers keep it for him.

Four of the Mitigating Conditions (MC) apply. Applicant's dual citizenship is based solely on his parent's citizenship or birth in a foreign country. Applicant is the youngest of eight children and was born where his parents resided in 1979, which was Kuwait (¶11.a). Applicant repeatedly expressed a willingness to renounce his Jordanian citizenship (¶11.b). The Jordanian passport was obtained and renewed before Applicant became a U.S. citizen in 2004 (¶11.c). His Jordanian passport he surrendered to his company's security officer, who placed it in Applicant's security file. If Applicant seeks to have it returned to him before, or even after it expires in 2008, the security officer declared it would be noted on the Government JPAS computer system in an incident report. (¶11.e)

**Foreign Influence:** Applicant has family members, siblings and parents, living in Kuwait, Saudi Arabia, and Jordan. He also has three brothers in the United States, and a fourth brother in Canada. If Applicant has contact with relatives in a foreign country, this factor alone is sufficient to create potential for foreign influence and could potentially result in the compromise of classified information. Applicant has frequent contact with his parents. He has less contact with his siblings in Jordan, Kuwait, and Saudi Arabia. He communicates frequently with his three brothers in the United States. His close relationship with his parents creates a heightened risk of foreign pressure or attempted exploitation because terrorists in the Middle East seek intelligence and are hostile to the United States. A security concern arises because Applicant may desire to help his parents or siblings in a particular situation.

The Government presented substantial evidence of two disqualifying conditions. The condition that could raise a security concern and may be disqualifying which is applicable here is ¶7.a (contact with a foreign family member 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), and ¶7.b (connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information). The burden now shifts to the Applicant to produce evidence and prove a mitigating condition. The Government never has to prove the applicability of a mitigating condition.

Two mitigating conditions are potentially applicable to these disqualifying conditions:

¶8.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 the foreign individual and the interests of the U.S.; and,

¶8.b there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person 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. interests.

Applicant has a sufficient relationship with his parents, and a lesser relationship with his three siblings in the Middle East, which make ¶8.a inapplicable. There is a remote possibility that terrorists could attempt to coerce or threaten Applicant through his parents or three siblings. He might be placed in the situation of having to choose between his family members and the interests of the United States.

Applicant showed ¶8.b applied. He established a sufficient relationship and depth of loyalty to the United States that he can be expected to resolve any conflict of interest in favor of the United States. He came to the United States in 1998 for his education. Three of his brothers followed the same path prior to Applicant, pushed by their parents who realized their children would have a better life in the United States than elsewhere. He became a U.S. citizen in 2004. Since arriving in the United States, Applicant made only one voluntary trip back to Jordan. His 2006 trip was at the direction of his employer. In preparation of that trip, Applicant complied with all filing and disclosure requirements. Applicant likes his job, and is closer to his siblings in the United States than to those in the Middle East. His parents have green cards, and spend nearly half of each year in the United States visiting Applicant and his siblings. Applicant has no property or assets outside the United States. He uses only his U.S. passport when traveling outside the United States.

**Whole Person Analysis** "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." AG ¶ 2(a). "Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." AG



¶ 2(a). In evaluating Applicant's case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

Of the nine adjudicative process factors which are used in the "whole person" analysis, only the eighth one, "the potential for pressure, coercion, exploitation, or duress," is the most relevant. In addition to that factor, other "available, reliable information about the person, past and present favorable and unfavorable, should be considered in reaching a determination." (Adjudicative Process, ¶2.a)

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. Applicant is a mature person with two college degrees in a technical profession. He has lived in the United States for nine years, and is part of his family's tradition and practice of coming to America to study, be educated, marry, get a good job, and become a U.S. citizen. His three brothers in the United States fulfilled those goals, and Applicant has done the same. He received very favorable comments from his co-workers and superiors about his work product and work ethic. There is no statement he submitted that opposes his security clearance application or produced any derogatory information about him. His ties to the United States are stronger than his ties to any Middle Eastern country, more particularly shown by his making only one voluntary trip with a niece and nephew to Jordan in nine years. His brothers do not travel back there on a regular basis, either. These four brothers are focused on the United States and their future here. Applicant is part of that process and effort. His parents spend nearly half of each year in the United States. His Jordanian passport is held by his employer's security officer and expires in less than one year. He expressed a willingness to renounce his Jordanian citizenship.

Some circumstances weigh against Applicant in the "whole person" analysis. Jordan has a significant risk of terrorist activity, as does Saudi Arabia where one of Applicant's sisters lives. He has a brother in Kuwait. Terrorists may attempt to use his family members to obtain classified information. But Applicant has not disclosed the nature of his work to his family, and the Jordanian government has an interest in protecting Applicant because he is helping it pursuant to the contract between his employer and that government. Applicant was born in Kuwait, and spent his formative years in the Middle East. Lastly, he has frequent contact with his parents, who also helped pay for his education in the United States. The closer the connection to a relative in a foreign country, the greater the risk that pressure might result in a compromise of national security.

After weighing all these factors, the facts, and the DC and MC under these guidelines, I conclude Applicant mitigated the security concerns pertaining to foreign preference and foreign influence. I also conclude the "whole person" analysis for Applicant. The evidence leaves me with no doubts as to Applicant's security eligibility and suitability.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C:                      FOR APPLICANT

Subparagraph 1.a:	For Applicant
Paragraph 2. Guideline B:	FOR APPLICANT
Subparagraph 2.a to 2.e:	For Applicant

### **DECISION**

In light of all of 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.

Philip S. Howe  
Administrative Judge