



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-03166
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Department Counsel
For Applicant: *Pro Se*

June 12, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On October 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines B and C. 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); 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, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on December 6, 2007. Applicant did not respond to the FORM. The case was assigned to me on April 1, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 46 year old employee of a defense contractor.

Applicant was born in Jordan. At some point he moved to the United States. He married his current wife in 1987. She became a United States citizen in 1989. He became a United States citizen in 1993. They have three children, all of whom were born in the United States.

Applicant has had a United States passport since 1995. He also possesses a Jordanian passport, which he last renewed in 2005. He used the Jordanian passport in lieu of his United States passport on several occasions, most recently for trips to Jordan in 2003 and 2005.

Applicant's mother, three married sisters, a niece, and four of his brothers are citizens and residents of Jordan. Three other brothers are citizens of Jordan. In his response to the SOR, applicant stated he maintains "familial" contact with these family members. He added that contact with his mother is "limited to casual phone calls," and contact with his four brothers residing in Jordan and his sisters is "very limited to casual communication on holidays and special occasions."

One of applicant's brothers-in-law is an engineer in the Jordanian Air Force. His communication with him is "limited to casual communication."¹

Applicant is part owner of a factory and two houses in Jordan. Applicant pays no expenses, and receives no income, from these property interests, which were inherited from his father. In addition to the 2003 and 2005 trips to Jordan mentioned above, applicant traveled to Jordan in 2006 and 2007.

During an interview with an OPM investigator in November 2006, applicant stated he used his Jordanian passport in lieu of his United States passport to travel to Jordan because it allowed him to stay in Jordan as long as he wanted. He would have been limited to 30 days if he used his United States passport. He also stated that he feels some loyalty toward Jordan "as it is the country of his birth and his mother and some of his siblings still live there." He added, however, that the United States "holds his ultimate loyalty" as his family, career and future are here. Lastly, he stated that he is willing to renounce his Jordanian citizenship and give up his Jordanian passport if necessary to receive a security clearance, something he reiterated in his SOR response.

The Government provided seven official United States publications with the FORM (Exhibits 6 through 12) that describe the economic, political and intelligence activities of Jordan and terrorists operating within Jordan. I take administrative notice of the following facts found therein:

¹SOR Response.

Jordan, which has a population of approximately 5.9 million, is a constitutional monarchy that is pro-Western. Although the government respected human rights in some areas, its overall record continued to reflect problems. While in Jordan, American citizens who also possess Jordanian nationality may be subject to laws that impose special obligations on Jordanian citizens.

Combating terrorism has been a major problem for Jordan. United States personnel and assets in Jordan have been targeted by terrorists in recent years. Terrorists use overt, covert, and clandestine activities to exploit and undermine United States national security interests.

Policies

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.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President 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 with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) 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 (App. Bd. Dec. 19, 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, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

Analysis

Guideline B, Foreign Influence

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is as follows:

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.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 7.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” may be disqualifying. Under Paragraph 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” may be disqualifying. Under Paragraph 7.e., “a substantial business, financial, or property interest in a foreign country . . .” may be disqualifying. Lastly, under Paragraph 7.i., “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” may be disqualifying.

Applicant maintains “familial” contact with his immediate family members residing in Jordan. He has also traveled to Jordan at least four times since 2003. Applicant’s presence in Jordan during these trips made him and his family members potentially vulnerable to exploitation, pressure, or coercion by not only the Jordanian government, but also by terrorists operating in Jordan. These facts raise concerns under Paragraphs 7.a., 7.b., and 7.i. Paragraph 7.e. is not applicable because applicant’s interests in a factory and two houses in Jordan do not appear to be substantial.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph 8.a., it is potentially mitigating if an applicant can demonstrate that “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.” Under Paragraph 8.b., it is potentially mitigating if an applicant can

demonstrate “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.” Lastly, under Paragraph 8.c., it is potentially mitigating if an applicant can demonstrate that the “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.”

None of the foregoing mitigating conditions is applicable. Applicant’s contacts with his parents and siblings in Jordan are consistent and ongoing. His familial relationship with them creates a risk of foreign influence or exploitation. Applicant failed to provide sufficient credible evidence that it is unlikely he would be placed in a position of having to choose between the interests of a foreign government and the interests of the United States, or that he is not vulnerable to a conflict of interest.

Guideline C, Foreign Preference

The security concern relating to the Foreign Preference guideline is set forth in Paragraph 9 of the AG, and is as follows:

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.

Paragraph 10 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 10.a.1., exercising any right or privilege of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member, such as possession of a current foreign passport, may be disqualifying. Under Paragraph 10.b., taking action to acquire or obtain recognition of a foreign citizenship by an American citizen may also be disqualifying. The fact that applicant renewed and used a Jordanian passport after he became a United States citizen requires application of these two disqualifying conditions.

Paragraph 11 describes potentially mitigating conditions. Under Paragraph 11.a., it may be mitigating if the “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” And, under Paragraph 11.b., it may be mitigating if “the individual has expressed a willingness to renounce dual citizenship.” Both mitigating conditions are applicable.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense 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.

Applicant was born in Jordan. Although he has spent most if not all of his adult life in the United States, he still has significant ties and some level of loyalty to Jordan and to his immediate family members living there, as evidenced by his dual citizenship, his statement that he still feels some loyalty to Jordan, his trips to Jordan, and the "familial" relationships he maintains with his family members. His voluntary actions could leave him vulnerable to coercion, exploitation, or pressure and could cause the future compromise of classified information. I have carefully reviewed the administrative record, applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guidelines B and C, and I have evaluated applicant's conduct in light of the whole person concept identified at Paragraph E2.2. of Enclosure 2 of the Directive. After doing so, I conclude that applicant failed to rebut the Government's case under Guidelines B and C.

There is nothing in the record that suggests applicant is anything but a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied concern as to applicant's allegiance, loyalty, or patriotism.

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 B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	Against Applicant

Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JOSEPH TESTAN
Administrative Judge