



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



In the matter of:)	
)	
)	ISCR Case No. 07-11728
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

September 22, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference. His eligibility for a security clearance is denied.

Applicant submitted an electronic Questionnaire for National Security Positions (SF-86) on June 29, 2006. On April 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference. 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.

On May 1, 2008, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on June 23, 2008. The FORM contained documents identified as Items 1 through 5. Additionally, the Government submitted with the FORM official U.S. government publications containing facts about Jordan and Israel. The Government requested that I take administrative notice of those facts in my decision in this case. I marked the Government summary and accompanying documents as Hearing Exhibit (HE) 1. By letter dated June 25, 2008, a copy of the FORM, including the documents offered for administrative notice, was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant was provided with a complete copy of the FORM; he received the file on June 30, 2008. His response was due on July 30, 2008. He failed to submit any information within the required time period. On September 15, 2008, the case was assigned to me for a decision.

Findings of Fact

The SOR contains eight allegations which raise security concerns under Guideline B, Foreign Influence, and two allegations which raise security concerns under Guideline C, Foreign Preference. Applicant admitted all SOR allegations under Guidelines B and C. His admissions are admitted herein as findings of fact.

Applicant was born in the U.S. and is a U.S. citizen. He also claims dual citizenship with Jordan. He is unmarried and employed as an auditor by a government contractor. He seeks a security clearance. (Item 3; Item 4.)

Applicant resided in Israel from at least 1995 through August 2001. From 1998 to 2001 he attended a high school in Israel, from which he graduated in 2001. He earned a degree in accounting from a U.S. university in 2005. (Item 3; Item 4.)

Applicant's parents and sister are dual citizens of the U.S. and Jordan. They reside in Israel. Applicant's father is an officer in a family business located in part in Israel. His mother is employed as a secretary by the family business. Applicant's sister is a student at a university in Israel. About once a month, Applicant has contact with his parents and sister by telephone. (Item 5.)

Applicant's maternal grandfather is a dual citizen of the U.S. and Jordan and resides in Israel, where he owns a business. Applicant's maternal grandmother is a citizen of Jordan and also resides in Israel. She is employed in her husband's business. Applicant has contact with his maternal grandparents about once a year by telephone. (Item 3; Item 5.)

Applicant has four uncles. One of Applicant's uncles is a dual citizen of the U.S. and Jordan and resides in Jordan. The uncle is the president of the family business

which employs Applicant's father and mother. Applicant has contact with his uncle in Jordan twice a year by telephone. (Item 5.)

Three of Applicant's uncles are dual citizens of the U.S. and Jordan and reside in the U.S. Two of the uncles own a U.S. business together. From April 2004 to June 2006, Applicant was employed by these two uncles in their business. The third uncle is employed by a U.S. university. Applicant has contact with his three uncles who reside in the U.S. about three to four times per week. (Item 4; Item 5.)

Applicant's brother and his paternal grandmother are also dual citizens of the U.S. and Jordan. They reside in the U.S. Applicant's brother is employed as an information technology consultant by a U.S. business. His paternal grandmother is unemployed. Applicant has daily contact with his brother and paternal grandmother. (Item 5.)

Applicant does not own property in Jordan, Israel, or any other foreign country. He does not possess any foreign bank accounts. He does not have any foreign business or financial interests. He does not receive support from his foreign national relatives. (Item 5.)

Applicant was issued a U.S. passport on November 2, 2000. He maintains and uses a Jordanian passport when he travels to Jordan. He was issued a Jordanian passport in May 2004. His Jordanian passport will expire in April 2009. (Item 5.)

While he considers himself to be a loyal U.S. citizen, Applicant exercises dual citizenship with Jordan and is unwilling to renounce his Jordanian citizenship. He maintains Jordanian citizenship because he expects someday to inherit property in Jordan, and Jordanian citizenship is a condition for eligibility to inherit property in that country. (Item 3; Item 5.)

Applicant traveled to Jordan and Israel in June 2002, December 2002, June 2003, and March 2006. He traveled to Jordan in August 2002 and December 2003. (Item 3; Item 5.)

I take administrative notice of the following facts offered by the Government and derived from official U.S. publications:

Jordan, a constitutional monarchy located in the Middle East, carries out a pro-Western foreign policy that is helpful to the U.S. Jordan's human rights practices, on the other hand, include torture, arbitrary arrest, denial of due process, and restrictions on freedom of speech, assembly, press, association, and movement. (HE 1: Summary)

Jordanian law applies to dual Jordanian-American citizens, and dual citizens are treated as Jordanian citizens under the law. Jordan subjects male dual citizens under the age of 37 to mandatory military service. (HE1: Summary)

Even though Jordan has aggressively pursued terrorists, the threat of terrorism carried out by transnational and local terrorist groups remains high in Jordan. These terrorists use overt, covert, and clandestine activities, including human espionage and other means, to exploit and undermine U.S. national security interests. In recent years, numerous terrorist plots against U.S. interests have been interrupted by Jordanian security forces. In November 2006, Jordanian officials intercepted a plot to assassinate President Bush when he visited Jordan. (HE 1: Summary)

Israel, Jordan's neighbor in the Middle East, is a parliamentary democracy. The U.S. is Israel's largest trading partner. Israel and the U.S. have a close relationship based on common democratic values, religious affinities, and security interests. Even so, the U.S. has concerns with some of Israel's policies, specifically Israel's sale of military goods to China, Israel's inadequate protection of U.S. intellectual property, and certain cases of espionage involving compromise of proprietary or classified information with military applications. (HE 1: Summary.)

Israel is an active collector of U.S. proprietary information and targets private industry and U.S. Government organizations. (HE 1: Summary)

There is a continuing threat of terrorist attacks in Israel. The U.S. Government has urged Americans traveling in Israel to exercise a high degree of care when visiting places associated with U.S. interests or located near official U.S. buildings. (HE 1: Summary)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines 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 classified 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 security decision.

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 B, Foreign Influence

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts of Applicant's case raise security concerns under disqualifying conditions AG ¶ 7(a), AG ¶ 7(b), and AG ¶ 7(i).¹

United States interests are targeted by transnational and local terrorists operating in Jordan and Israel. American citizens with immediate family members who are citizens or residents of Jordan or Israel could be vulnerable to coercion, exploitation, or pressure. They could also be pressured by individuals or groups in Israel or Jordan seeking sensitive information or technology held by or developed by U.S. government contractors.

Applicant, a dual citizen of the U.S. and Jordan, resided in Israel during his adolescent years. He attended high school in Israel. His father, mother, and sister are dual citizens of the U.S. and Jordan. They currently reside in Israel, where the father and mother work in a family business and the sister is a student at an Israeli university. Applicant's maternal grandfather is a dual citizen of the U.S. and Jordan and resides in Israel with Applicant's maternal grandmother, who is a citizen of Jordan. Applicant's maternal grandfather and grandmother carry out a separate business in Israel. One of Applicant's four uncles is a dual citizen of the U.S. and Jordan and resides in Jordan. He is the president of the business that employs Applicant's father and mother in Israel. Applicant's contacts with family members residing and operating businesses in Jordan and Israel are multiple and diverse. These facts raise security concerns under AG ¶¶ 7 (a) and 7(b).

In addition, Applicant has close relations and frequent contact with his brother, paternal grandmother, and three uncles, all of whom are dual citizens of the U.S. and Jordan and reside in the U.S. Applicant and his brother, who represent the third generation of the extended family, are both employed by U.S. businesses, the brother as an information technology consultant and Applicant as an auditor. These facts also raise security concerns under AG ¶¶ 7(a) and 7(b).

Applicant maintains an active Jordanian passport. In June 2002, June 2003, June 2003, and March 2006, Applicant traveled to Jordan and Israel. He made separate trips to Jordan in August 2002 and December 2003. He uses his Jordanian passport when traveling to Jordan. This raises a security concern under AG ¶ 7(i) because, as a U.S. citizen, Applicant's reliance upon his Jordanian citizenship in these

¹ AG ¶ 7(a) reads: "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." AG ¶ 7(b) reads: "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." AG ¶ 7(i) reads: "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign group, government, or country."

circumstances could make him vulnerable to exploitation, pressure, or coercion by a foreign group, government, or country.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply. If Applicant's "foreign contacts and activities are on U.S. Government business or approved by the cognizant security authority," then AG ¶ 8(d) might apply.

Applicant's relationships with his parents, siblings, grandparents, and uncles are neither casual nor infrequent. Instead, Applicant's relationships are based on longstanding family ties of affection and obligation. Applicant is a dutiful son, brother, grandson and nephew to relatives who are dual citizens of the U.S and Jordan who reside and conduct business in Jordan and Israel. Because transnational terrorism is a serious concern in those countries, and because there are also interests who may be seeking classified or protected information, Applicant's close relationships with family members in Jordan and Israel raise a heightened risk that he could be pressured to choose between the interests of the foreign individual, group, organization, or government and the interests of the U.S.

Applicant maintains dual citizenship with Jordan so that he can be eligible to inherit property in Jordan in the future. This interest creates a conflict of interest in favor of Jordan. Applicant failed to provide documentary evidence to corroborate that he would resolve any security-related conflict of interest in favor of the U.S. Applicant's relationships with his family members who are dual citizens of the U.S. and Jordan and who reside in Jordan and Israel could force him to choose between loyalty to his family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005))

Applicant's use of his Jordanian passport to enter Jordan could make him vulnerable to exploitation, pressure, or coercion by a foreign group, government, or country. He failed to provide documentation to show that he used his foreign passport while on official U.S. government business or that his use of a foreign passport was approved by his cognizant security authority. I conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), 8(c), and 8(d) do not apply to the facts of Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. 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."

Guideline C, Foreign Preference

Under AG ¶ 9, the security concern involving foreign preference arises "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States." Such an individual "may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant is a native-born U.S. citizen. He expects to inherit property in Jordan at some time in the future. As an adult, he actively sought dual citizenship with Jordan and a Jordanian passport. He did this in order to assert and maintain Jordanian citizenship so that he might comply with the inheritance laws of Jordan. Additionally, he used his Jordanian passport to enter Jordan. He refuses to renounce his Jordanian citizenship. These actions show an allegiance to a country other than the U.S.

I have carefully reviewed the facts of Applicant's case and the Foreign Preference AG. I conclude that Applicant's conduct raises potentially disqualifying security concerns under AG ¶10 (a)(1), ¶10(a)(5), and AG ¶10 (b).

Under AG ¶11(a), dual citizenship might be mitigated if it is based solely on an applicant's parents' citizenship or birth in a foreign country. Under AG ¶ 11(b), an individual's dual citizenship might be mitigated if he or she has expressed a willingness to renounce dual citizenship. Under AG ¶11(c), an individual's exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor. Under AG ¶11(d), an individual's use of a foreign passport might be mitigated if it were approved by his cognizant security authority. Under AG ¶ 11(e), an individual's use of a foreign passport might be mitigated if he presented credible evidence that the passport had been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

I conclude that none of the Guideline C mitigating conditions applies to the facts of Applicant's case.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance 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) the 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.

