



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-14556
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

September 26, 2008

Decision

CURRY, Marc E., Administrative Judge:

On April 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, foreign influence, and E, personal conduct. 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 on May 30, 2008, admitting the allegations and requesting a hearing. I received the case assignment on July 10, 2008. DOHA issued a notice of hearing on July 25, 2008, and I convened the hearing as scheduled on August 20, 2008. During the hearing, I received three government exhibits and the testimony of two Applicant witnesses. DOHA received the transcript on September 2, 2008. Based

upon a review of the record evidence, eligibility for access to classified information is granted.

Rulings of Evidence

Department Counsel requested that I take administrative notice of the facts set forth in 19 source documents marked and identified as government's exhibits I through XIX. I did not take administrative notice of Exhibits XVI through XIX. Because Applicant did not receive copies of any of the source documents before the hearing, I reserved judgment on the remainder, leaving the record open until August 27, 2008 to afford Applicant the opportunity to review them. He did not respond, therefore, I will take administrative notice of Exhibits I through XV.

Findings of Fact

Applicant is a 31-year-old married man with an infant child. He is a U.S. citizen who was born in Israel, and has lived there nearly his entire life (Tr. 69). His parents are Christian missionaries who moved there in the 1960s (Tr. 58-59). They retained their U.S. citizenship. For the past 15 years, his father has been the senior pastor at an interdenominational church in West Jerusalem. He talks to his parents approximately once per month (Exhibit 2 at 3).

During Applicant's childhood, he lived in several communities in Jerusalem with people from a variety of ethnic backgrounds. The neighborhoods ranged from majority Israeli to majority Arab. Sometimes he lived in neighborhoods with a combination of both ethnic groups (Tr. 105). Applicant spent the majority of his childhood living in West Jerusalem, a majority Jewish area (Tr. 105). All of his neighbors at that time were Israeli Jews (Tr. 106). From fourth to sixth grade, he went to an Israeli school and was the only non-Israeli who attended (Tr. 106). From grades seven through twelve, he attended a Christian school. His classmates were "kids from all over" including diplomats' children, Palestinians, and some Israeli Jews (Tr. 106).

Throughout Applicant's childhood, his family visited the U.S. for extended visits approximately every other year (Tr. 68). Through 2005, none of his trips to the U.S. had exceeded three months (Tr. 69).

After graduating from high school in 1995, Applicant attended an elite, American school located in Jordan to study the Arabic language (Tr. 65). He earned a certificate in 1997 (Exhibit 1 at 7). He then returned to Jerusalem to attend college at a Jewish university (Tr. 63; Answer, SOR ¶1.h). He majored in middle eastern studies, Islamic studies, and Biblical studies (Tr. 100-101). While attending college, he worked for a United Kingdom-based newspaper as a correspondent and a translator (Tr. 64). By then, he was fluent in English, Hebrew, and Arabic (Tr. 65).

While in college, Applicant met his wife, who was also studying there at the time (Tr. 67). They married in 2001.

Applicant graduated from college in June 2004 (Exhibit 1 at 6). He continued to work for a foreign-owned newspaper in Jerusalem from 1998 until 2005 (Answer, SOR ¶ 1.i). During this time, he “would periodically read about how after 9/11, there was a dire need for people with skills in the Arabic language, and specifically with regional experience” (Tr. 102). In May 2005, he decided to leave his job at the newspaper, move to the U.S., and seek work as a translator and/or an analyst.

Applicant began working for his current employer in November 2006 as an Arabic media analyst (Exhibit 1 at 8; Tr. 85).¹ He provides analysis to the U.S. military of how its daily activities are being covered in the Arab media (Tr. 85). Also, before a U.S. general is interviewed by an Arab media outlet, he prepares an analysis brief of the media outlet and reviews it with the general (Tr. 110). His goal is to help the officers gain “some idea of what they [are] getting into when being interviewed by [the respective Arabic media outlet],” and to minimize the possibility of any cultural *faux pas* (Tr. 110). Recently, he translated the U.S. Central Command’s website into Arabic (Tr. 109).

Applicant’s wife is a Jordanian citizen. She has recently applied for U.S. citizenship (Tr. 53). She was born in East Jerusalem, and spent most of her childhood in the United Arab Emirates (Tr. 78; 107). From Israel’s founding in 1948 through 1967, East Jerusalem was part of Jordan (Exhibit VII at 10) After the Six-Day War, Israel annexed it, but did not extend Israeli citizenship to its residents (Tr. 51). Currently, it remains under Israeli jurisdiction (*Id.*; Exhibit VII at 10). The majority of its residents are ethnic Palestinians with Jordanian citizenship.

Applicant’s father-in-law is a Palestinian with Jordanian citizenship (Tr. 97). He works for a private, multinational bank (Tr. 98). Applicant’s mother-in-law is originally from South Korea. She is a Jordanian citizen by virtue of her marriage to Applicant’s father-in-law (Tr. 99). She is a retired nurse (*Id.*). Applicant’s wife and in-laws are all Christians (Tr. 68). Applicant talks to his in-laws once every few months (Tr. 98). Recently, they visited him and his wife in the U.S. after their baby was born, staying for five weeks (Tr. 98).

Applicant has four sisters and two brothers. All are U.S. citizens. His oldest sister is a homemaker who lives in Israel (Tr. 81; 89). She is married to an American. He talks with her a few times per month. She and her family spend each summer in the U.S. While here, they live in a summer home that they own, and usually visit Applicant’s family before returning to Israel.

¹Between May 2005 and November 2006, Applicant was unemployed. He supported himself through a combination of savings and the help of his wife, who obtained a job (Tr. 70).

Another sister is a high school teacher by training who is currently a homemaker. She lives in Jerusalem with her husband, a professor.² They are in the process of moving to Italy (Tr. 81). Applicant talks with her approximately twice a month (Tr. 81).

Applicant's third sister lives in Jerusalem (Tr. 93). She is a home health care aide, and is earning a master's degree in psychology (Tr. 81). He talks with her approximately once per month. Her husband is a U.S. citizen who works with a Christian ministry which promotes reconciliation between Jews and Arabs (Tr. 93). Applicant's youngest sister is a college student who lives with him (Tr. 82). She is not married.

Applicant's younger brother is a first lieutenant in the U.S. Air Force (Tr. 81). He finished the Reserve Officer Training Corps (ROTC) in 2005. He is currently stationed in the U.S., and is preparing to deploy to a combat theatre (Tr. 82).

Applicant's youngest brother is a recent college graduate who lives with their parents in Jerusalem (Answer, SOR ¶1.d). He is a filmmaker (Tr. 81-82). He is not married. Generally, Applicant talks with him when he talks with his parents.

Since moving to the U.S., Applicant has traveled to Jerusalem three times to visit his family (SOR ¶ 1.e). He has visited Jordan several times over the years. The visits have included weekend leisure trips with family members, and trips to visit friends (Exhibit 2 at 4; Tr. 107).

Applicant has approximately \$30,000 of assets including stocks, and personal savings. All of it is invested in the U.S. (Tr. 126).

Applicant did not register for the draft as required by 10 U.S.C. § 453 (Answer, ¶ 2.a). He knew that he had an obligation to register, and had planned upon doing so when he moved to the U.S. After moving to the U.S. and applying, he discovered that he was past the age limit (Tr. 111; 116-117). In 2005, he wrote the Selective Service informing it of his failure to register (Tr. 113).

Israeli citizenship is available to Jews living anywhere in the world. Non-Jews are prohibited from becoming Israeli citizens. Israel and the U.S. are bound closely by historic and cultural ties as well as mutual strategic interests (Exhibit VII at 10). There have been, however, some cases of individuals prosecuted and convicted of spying against the U.S. for Israel (Exhibit VII at 30). The threat of terrorist attacks in Israel is ongoing, and the U.S. government warns that American interests could be the focus of such attacks (Exhibit VIII at 4).

Jordan has enjoyed a close relationship with the U.S. for six decades (Exhibit I at 5, 6). It is ruled by a king, has a council of ministers selected by the king, and has a partially elected national assembly (*Id.* at 1, 2). The king has repeatedly denounced

²There is no record of her husband's nationality.

extremists, and promotes a tolerant, moderate brand of Islam (Exhibit IV at 8). Recently Jordan's parliament passed new anti-money laundering legislation aimed at individuals and entities which attempt to bankroll terrorist groups. Also, it has organized a state security court that specializes in cases involving terrorism.

Despite Jordan's vigilant efforts to combat terrorism, the threat remains (Exhibit II at 2). Terrorist groups in Jordan use covert, overt, and clandestine activities to undermine and exploit U.S. national security interests (Exhibit II at 2).

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching 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."

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.

Analysis

Guideline B, Foreign Influence

Under this guideline, "foreign contacts and interests may be a security concern if an 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 interests” (AG ¶ 6).³

Applicant’s parents, some of his siblings, and both of his parent-in-laws live in Jerusalem, a city under Israeli control with a sizeable population of Palestinians who are Jordanian citizens. It remains a focal point of the Palestinian-Israeli conflict. Although Jordan is an ally of the U.S., and has recognized Israel under a peace agreement approximately 15 years ago, terrorist elements within its borders actively seek to undermine both the efforts at a long-term, peaceful resolution to the Palestinian-Israeli conflict, and other U.S. strategic and regional interests. The presence of Applicant’s family members in an area where so many countries, ethnicities, and transnational groups have competing and sometimes hostile interests generates the application of AG ¶ 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.”

Applicant’s wife is a Jordanian citizen. Because she lives with him in the U.S., their relationship does not create a direct security risk. Nevertheless, Applicant is potentially subject to coercion through his wife from her parents who are Jordanian citizens living in East Jerusalem. AG ¶ 7(d), “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement manipulation, pressure, or coercion,” applies.

Applicant’s immediate family members are U.S. citizens who are part of a small community of Americans that live in Israel. Although Israel is a staunch ally of the U.S., it has a history of conducting espionage against the U.S. As non-Jews, Applicant’s family members cannot be Israeli citizens under Israeli law. Consequently, no sense of ethnic chauvinism or national pride exists which would induce them to coerce Applicant into providing classified information. Although their unique status makes them vulnerable targets for exploitation by the Israeli government, it is unlikely that it would attempt to use overt intimidation to exploit Applicant’s relationship with them considering its role as the only transparent democracy in the region.

Jordan is not a democracy; however, its historically strong relationship with the U.S., and its demonstrated track record of assistance in helping the U.S. achieve its strategic objectives in the region render it similarly unlikely that it would use overt intimidation to exploit Applicant’s relationship with his in-laws. Conversely, despite the best efforts of the Israeli and Jordanian governments, terrorists operate extensively throughout the region, and retain the capacity to strike both on Jordanian soil and Israeli

³Under this guideline, a security concern may exist if relatives are residing in a foreign country even if they are U.S. citizens. The corresponding disqualifying and mitigating conditions reference “foreign persons” but do not consistently reference U.S. citizens resident in foreign countries. When using the word “foreign” in my analysis, I have construed it to mean both “situated outside a place or country and [especially] one’s own country,” and “born in, belonging to, or characteristic of some place or country other than the one under consideration” Mirriam-Webster Dictionary, 11th Edition, Mirriam-Webster, Inc., 2005.

soil. Such groups would not hesitate to use the threat of overt force to exploit Applicant's relationship with his family members in Jerusalem. Moreover, terrorists' governing philosophies and objectives are completely antithetical to U.S. interests. The pervasive presence of terrorists in this region renders the potentially mitigating condition listed in AG ¶ 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 a foreign individual, group, organization, or government, and the interests of the U.S.," inapplicable.

Applicant has a close relationship with his relatives, visiting them and speaking with them whenever he gets an opportunity. AG ¶ 8(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" apply.

Applicant has only lived in the U.S. for three years. Although a friend testified credibly and persuasively on his behalf at the hearing, he has yet to develop longstanding relationships in the U.S. necessary to trigger the application of AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty 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."

The inapplicability of AG ¶ 8(b) does not compel a conclusion that Applicant would not resolve a conflict of interest in favor of the U.S. interest. He is a loyal, intensely patriotic American who was born a U.S. citizen, as were all of his immediate family members. His brother is an officer in the U.S. Air Force. AG ¶ 8(b) is inapplicable because his most significant longstanding relationships with U.S. citizens were developed abroad, not in the U.S., as the mitigating condition requires.

None of the remaining disqualifying and mitigating conditions are relevant.

Guideline E, Personal Conduct

Applicant's failure to register for the draft raises a personal conduct security concern.⁴ He certainly exercised bad judgment when he decided to wait until he moved to the U.S. before registering without checking the law beforehand. He did attempt to register when he moved to the U.S., as planned, but discovered that he was by then too old. His omission, however, was an honest mistake, rather than an intentional attempt to evade the draft. Although his explanation mitigated the personal conduct security concern, his failure to register underscores his disconnection from American society growing up in a foreign country.

⁴Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information (AG ¶ 15).

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." The mere presence or absence of a disqualifying or mitigating condition is not dispositive.⁵ Instead, the ultimate determination of whether to grant eligibility for a security clearance is an overall commonsense judgment based upon careful consideration of the guidelines within the context of the whole person concept.

The War on Terror is both a military and an ideological war. The adversary operates across multiple countries, and uses religion and culture as a pretense for its destructive activities. Consequently, the U.S. military has had to strike a balance between aggressively fighting terrorists without creating the perception that it is waging war against the culture and religion of the respective countries where terrorists operate. The promotion of American values - respect for the rule of law, religious tolerance, freedom of speech, and the respect for human rights - have been critical to this endeavor.

By serving the military as an Arab media analyst who is helping senior military officers communicate more effectively with the various communities where much of the War on Terror is being fought, Applicant is making a critical contribution to its long-term success. None of the foreign influence mitigating conditions apply because Applicant was born in the Middle East where much of his immediate family remains, and raised among Jews and Arabs in a city that remains a volatile flashpoint for conflict. However, his years living as a U.S. citizen in the Middle East are precisely what makes him a unique and valuable asset to the U.S. military effort in the region.

I am cognizant of Appeal Board jurisprudence which holds that the issue of an applicant's security clearance-worthiness typically does not turn on whether (s)he possesses unique professional abilities.⁶ However, the Appeal Board has held that the invaluable aid of an applicant to the War on Terrorism can overcome foreign influence

⁵ISCR Case No. 03-12882 (App. Bd., July 20, 2005).

⁶ISCR Case No. 99-0462 (App. Bd., May 25, 2000) at 5.

security concerns.⁷ Moreover, to deny Applicant a clearance when his unique professional abilities constitute the same factors which generate a foreign influence security concern would be to exalt form over substance. The Supreme Court has held that “the exaltation of form over substance is to be avoided.”⁸ Upon considering all of the facts and circumstances together with the disqualifying and mitigating conditions, in the context of the whole person concept I conclude Applicant has carried the burden. Clearance is granted.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge

⁷ISCR Case No. 04-12363 (App. Bd., July 14, 2006) at 2; ISCR Case No. 07-00034 (App. Bd., February 5, 2008).

⁸See generally, *U.S. v. DiFrancesco*, 449 U.S. 117(1980); *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155; *Ball v. James*, 451 U.S. 355 (1981).