



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



In the matter of:)
)
) ISCR Case No. 07-18299
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro Se*

April 14, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under the Foreign Influence adjudicative guideline. His eligibility for a security clearance is denied.

On October 12, 2006, Applicant executed and certified a Security Clearance Application (SF-86). On November 7, 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. 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 December 17, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. On February 17, 2009, the case was assigned to me. I convened a hearing on March 20, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced five exhibits (Ex.), and offered for administrative notice facts about The Palestinian Territories and the West Bank compiled from four official documents of the U.S. Government. (The five-page compilation was identified as "Administrative Notice." The documents from which the compilation was drawn were marked HE I through IV and included in the record.) Ex.1 through 5 were received into evidence without objection. Applicant testified on his own behalf and called no witnesses. He offered no exhibits. At the conclusion of the hearing, I left the record open until close of business April 1, 2009, so that Applicant could, if he wished, submit additional documentation for the record. On April 1, 2009, Applicant advised that he did not have any post-hearing documents to submit. DOHA received the transcript of the hearing (Tr.) on March 27, 2009.

Findings of Fact

The SOR contains four allegations of disqualifying conduct under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.d.). In his Answer to the SOR, Applicant admitted the four AG B allegations.

After a thorough review of the record in the case, including witness testimony, exhibits, relevant policies, and applicable adjudicative guidelines, I make the following findings of fact:

Applicant is 37 years old. He was born and educated in the United States. He has earned a Bachelor of Science degree in engineering and a Master of Science degree in telecommunications. He seeks a security clearance as a senior information security analyst employed by a government contractor.¹ He does not, at present, have access to classified information. (Ex. 1; Tr. 44-49.)

Applicant's parents were born in an area now identified as the West Bank of the Palestinian Territories. They immigrated to the United States and became U.S. citizens. Applicant and his four sisters were born in the United States. Applicant's father owned a restaurant business. (Ex.1; Tr. 53-56.)

In 1990, Applicant's mother left the United States and returned to live in the West Bank with his four sisters. In 1995, Applicant's father retired from his business in the United States and joined his wife and daughters in the West Bank. Applicant's father, mother, and four sisters currently reside in the West Bank. (Tr. 57-59.)

¹ Applicant holds a second full-time position as a security operations center engineer with a company owed by a foreign entity. The U.S. company which employs Applicant as a federal contractor is sponsoring him for a security clearance. (Ex. 4; Tr. 47-48.)

In 1999, Applicant traveled to the West Bank to visit his family and to discuss marriage with his parents. In 2000, he traveled to the West Bank with his fiancée and her family. He and his fiancée were married in the West Bank village where his parents live. Applicant's wife was born in the United States and is a U.S. citizen. Applicant and his wife are first cousins. They are the parents of three young children. (Ex. 1; Tr. 41-43, 50, 52, 94.)

Applicant traveled to the West Bank in 2001 for the wedding of one of his sisters. In 2003, he and his wife traveled to the West Bank to introduce their infant daughter to his family. In 2004, Applicant traveled twice to the West Bank for the weddings of two of his sisters. In 2007, he traveled to the West Bank to introduce his family to his second daughter and his son. He plans to travel to the West Bank in the future to visit his parents, sisters, and other family members there. (Tr. 42-43, 65.)

Applicant's mother and sisters possess Palestinian identification and travel documents. His father has also applied for and received approval from the Palestinian Authority for such documentation. Applicant's father, who is retired, collects U.S. social security. Applicant's mother is not employed outside the home. (Tr. 59, 63-64.)

Applicant is his parents' only son. His oldest sister is a teacher. Her husband, who is also a teacher, is a citizen and resident of the West Bank. The sister and her husband have two children and reside with Applicant's parents in their home. Applicant's youngest sister is divorced from her husband and also lives with Applicant's parents. Her former husband, a citizen and resident of the West Bank, is also a teacher. (Tr. 61, 69-72.)

Applicant's third sister lives in a village in the West Bank with her husband and son. The husband, a citizen and resident of the West Bank, is a teacher. Applicant's fourth sister is separated from her husband, who lives in the United States. The fourth sister lives with Applicant's parents and is pursuing university studies. (Tr. 66-67, 75.)

Applicant possesses a U.S. checking account for the purpose of helping his parents with their living expenses. His father's monthly social security check is deposited to the account, enabling Applicant to transfer the social security funds electronically to his father in the West Bank. Each month Applicant also provides his mother with approximately \$300 a month in support. He estimates that he provides his parents and sisters with a total of approximately \$5,000 to \$6,000 in support each year. For U.S. federal income purposes, Applicant claimed his mother and two of his sisters as dependents. (Ex. 4; Tr. 76-77, 96-102.)

Applicant is close to his parents and his sisters. He communicates with his sisters by e-mail, and he speaks with his parents by telephone once a week. (Tr. 64, 75.)

I take administrative notice of the following facts about the Palestinian Territories, including the West Bank:²

Palestine is a territory, created following World War I, as the result of a British mandate. The territory included land that is within the current borders of Israel, Jordan, the West Bank, and the Gaza Strip. In 1948, the British withdrew from the Palestinian Territory and Jews proclaimed an independent State of Israel. Arabs living in the Palestinian territory moved to the Egyptian-controlled Gaza Strip, the Jordanian-ruled West Bank, Jordan proper, Syria, and Lebanon. The Palestinian Liberation Organization (PLO) was established in 1964[,] and after 1967, became more militant, portraying itself as a movement struggling for national liberation. In time, the PLO became recognized by the Palestinian people, the Arab states, and much of the international community as the legitimate representative of the Palestinian people. In 1967, Israel took control of the Sinai and the Gaza Strip from Egypt, the West Bank and East Jerusalem from Jordan, and the Golan Heights from Syria. The Arabs living within this territory came under Israeli rule. The conflict between Arab Palestinians and Israel continued throughout the 1960s and 1970s, and increased during the 1980s in uprisings called the First Intifada. In 1988, Jordan ceded all Jordanian claims to the territory. In September 2005, Israel completed its unilateral withdrawal from Gaza but still controls the flow of people and goods in and out of the territories and continues to occupy the West Bank, and has erected hundreds of checkpoints and roadblocks to thwart terrorism.

Fatah, a secular nationalist party and the largest faction within the PLO, dominated Palestinian society and politics between 1969, when its leader Yasir Arafat became PLO chairman, and his death in 2004. In the January 2006, Palestinian legislative election, an opposition party, Hamas, formed a government without Fatah. Hamas grew out of the Muslim Brotherhood, a religious and political organization founded in Egypt in 1928, with branches throughout the Arab world. Hamas combines Palestinian nationalism with Islamic fundamentalism. Its founding charter commits the groups to the destruction of Israel and the establishment of an Islamic state in all of historic Palestine. It rejected the Oslo Accords, boycotted the 1996 elections, and has waged an intermittent terrorist campaign to undermine the peace process. Its military wing, the Izz al-Din al-Quassam Brigades, has carried out hundreds of terrorist attacks since 1993. The

² The facts contained in this summary were provided by Department Counsel and are derived from the following documents: Congressional Research Service Report for Congress, *The Palestinian Territories: Background and U.S. Relations*, July 5, 2007; U.S. Department of State, *Country Reports on Human Rights Practices – 2007: Israel and the Occupied Territories*, March 11, 2008, revised 2009; U.S. Department of State, *Travel Warning, Israel, the West Bank and Gaza*, January 15, 2009; U.S. Department of State, *Country Specific Information: Israel, the West Bank and Gaza*, February 8, 2008.

U.S. State Department has designated Hamas as a Foreign Terrorist Organization (FTO). The U[nited] S[tates] has also designated six other Palestinian groups as FTOs. In February 2007, Hamas and Fatah signed an agreement to form a national unity government, with Hamas controlling the Prime Minister position and nine ministries. However, in June 2007, factional fighting broke out and Hamas took complete control of the Gaza Strip. Palestinian Authority President Mahmoud Abbas and Fatah retained control over the West Bank.

The current security situation in the Palestinian Territories is such that the United States urges citizens to defer travel to the West Bank and to avoid all travel to the Gaza Strip due to threats to American citizens and U.S. interests in those locations. All U.S. Government personnel and their dependents are prohibited from traveling to any cities, towns or settlements in the West Bank, except when they are on mission-essential business or are traveling for other mission-approved purposes. Regarding Palestinian Authorities, there were reports of torture, arbitrary and prolonged detention, poor prison conditions, insufficient measures to prevent terrorism and corruption. U.S. citizens, including tourists, students, residents, and U.S. mission personnel, have been injured or killed by terrorists in Israel, Jerusalem, the West Bank, and Gaza. Additionally, in the past, armed gunmen have kidnapped foreigners, including several Americans. Gunmen in negotiations with the Palestinian Authority have sometimes used foreign hostages as bartering tools. The threat of hostage-taking remains a primary concern for Americans and foreigners within the Gaza Strip.

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.

Applicant’s case requires the recognition that the Palestinian Authority has neither prevented nor disavowed terrorist actions hostile to the United States and that factions within it support international terrorism. Additionally, it does not deter internal

factions that oppose, through violence, U. S. policies such as the Middle East peace process and human rights. These hostile actions by the Palestinian Authority directly threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of the West Bank, which is under Palestinian Authority control, could be vulnerable to coercion, exploitation, or pressure.

I have reviewed the allegations in this case, and I have weighed them against the disqualifying and mitigating conditions under the Foreign Influence guideline. I conclude SOR ¶1.c for Applicant, since it does not raise an independent disqualifying condition under the guideline but simply supports the security concerns that arise from the citizenship and residency of Applicant's parents and sisters, which are alleged at SOR ¶¶ 1.a and 1.b.

The facts of this case raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(i). 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(i) reads: "conduct, especially while traveling outside the U.S., which may make an individual vulnerable to exploitation, pressure, or coercion by a foreign group, government, or country."

Applicant has immediate family members who reside in a foreign country. Applicant is close to his parents and his four sisters, who are U.S. citizens living in the West Bank, and he communicates with them regularly. He owns and manages a U.S. bank account to which his father's monthly social security payments are sent, and he regularly sends his mother and sisters money to help them with their living expenses.

The United States has designated Hamas and six other Palestinian organizations as FTOs. The FTOs and their activities create instability and hostility, situations that threaten U.S. security interests. The presence of Applicant's immediate family members in the West Bank raises security concerns because their presence there could make Applicant vulnerable to coercion, exploitation, or pressure by a hostile foreign government or by terrorist groups operating in the West Bank.

Applicant has traveled to the West Bank to visit his family at least six times since 1999. He intends to travel to the West Bank in the future to visit his family members living there. Applicant's parents and sisters also exercise certain indicia of residency in the West Bank and utilize Palestinian identification and travel documents.

Two 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 "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.

Applicant’s relationship with his father, mother, and four sisters is based on long-standing family ties of affection and obligation. Applicant is a dutiful son who looks after the welfare of his parents and sisters. He is in frequent contact with them, and they rely upon him for their support. Applicant’s parents and sisters have elected to reside in a territory that presents serious dangers for U.S. citizens, thereby creating a heightened risk that Applicant could be targeted for exploitation, pressure, or coercion by individuals or groups in the West Bank who might also threaten U.S. security interests. Applicant travels to the West Bank regularly to visit his family members. Applicant failed to provide information to rebut or mitigate these security concerns. I conclude that the mitigating conditions under AG ¶¶ 8(a) and 8(c) are inapplicable.

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.”

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Additionally, DOHA’s Appeal Board has held that in Guideline B cases “[a] whole-person analysis should include reasonable consideration of the situation and nature of the country involved.” ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006). The Appeal Board has also observed that “[i]n Foreign Influence cases, the nature of the foreign government involved in the case, the intelligence gathering history of that government, and the presence of terrorist activity is important evidence that provides

context for the other evidence of record and must be brought to be brought to bear on the judge's ultimate conclusions in the case." ISCR Case No. 04-08560 at 4 (App. Bd. Oct. 10, 2006.)

Accordingly, I have considered the potentially disqualifying and mitigating conditions in light of the whole person concept and all the facts and circumstances surrounding this case. Applicant is an adult of 37 years of age. He is highly educated in engineering and telecommunications. He holds two full-time professional positions and provides significant support for his parents and sisters living in the West Bank. He claims his mother and two of his sisters as dependents for federal income tax purposes.

Applicant's family members are U.S. citizens living in the West Bank, an area with an active history of kidnapping and terrorism that targets U.S. citizens and threatens U.S. security interests. Their presence in the West Bank could cause Applicant to be subject to coercion, pressure or exploitation by individuals in the West Bank who threaten United States security interests.

Applicant is in weekly telephone contact with his parents. He communicates with his four sisters in the West Bank by e-mail. As a U.S. citizen, Applicant traveled to the West Bank in 1999, 2000, 2001, 2003, 2004, 2007 to visit his family. His frequent travel to the West Bank increases his exposure to the possibility of hostile actions by those who target U.S. citizens and U.S. security interests.

Applicant is a dutiful son and brother and devoted to his family in the West Bank. He provides his family with approximately \$5,000 to \$6,000 of support each year. He has plans to visit his parents and sisters in the West Bank in the future, even though the U.S. State Department urges U.S. citizens to defer travel to the West Bank because of security threats to American citizens and U.S. interests. Applicant's loyalty and commitment to the support of his parents and sisters is admirable. However, it raises concerns that his family commitments could cause conflicts in his ability to protect classified information.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Adjudicative Guideline B.

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
Subparagraph 1.a:	Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: 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.

Joan Caton Anthony
Administrative Judge