



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



In the matter of: ) ) ----- ) SSN: ----- ) ) Applicant for Security Clearance )	ISCR Case No. 08-00155
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**Appearances**

For Government: Paul M. Delaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 23, 2009

**Decision**

HOWE, Philip S., Administrative Judge:

On May 3, 2007, Applicant submitted his Security Clearance Application (SF 86). On August 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines C and B. 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 acknowledged receipt of the SOR on August 28, 2008. He answered the SOR in writing on September 25, 2008, and requested a hearing before an administrative judge. DOHA received the request on September 29, 2008. Department Counsel was prepared to proceed on November 6, 2008, and I received the case assignment on November 19, 2008. DOHA issued a Notice of Hearing on December 2, 2008, and I convened the hearing as scheduled on December 17, 2008. The

Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through E and G, without objection. Department Counsel objected to Applicant's Exhibit F, and I upheld the objection. DOHA received the transcript of the hearing (Tr.) on January 2, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Jordan. (Tr. 219 to 221) The request and the attached documents were admitted into evidence and were included in the record as Exhibit 5. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated September 25, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 2.a and 2.b, and 2.d, 2.e, and 2.f of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.c and 2.c of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 60 years old, married for 33 years, and has three adult children who were born in the United States. He works for a defense contractor. He retired from the U.S. Army civilian employee force in 2004. He started working for the Army in 1975. Applicant came to the United States with his parents and siblings in 1967 at the age of 19. He became a naturalized U.S. citizen in November 1974, having been born in Jordan. He has lived in the same house since 1975. (Tr. 104, 115-123, 143, 154, 196; Exhibits 1, B, D, G)

Applicant obtained his bachelor's degree in chemical engineering in 1973, and a master's degree in professional management in 1975. He has always been employed by the U.S. Government until his retirement. During that time period he held a security clearance until his retirement. (Tr. 119-122)

Since he arrived in the United States in 1967 using his Jordanian passport, Applicant has maintained and used the Jordanian passport to travel to his birth place in Jordan. He kept the Jordanian passport after he obtained a U.S. passport when he became a naturalized U.S. citizen. He maintains dual citizenship with Jordan. His answer in the 2001 security clearance application (SCA) at Question 14 states he does not possess a passport from another country other than the United States, when in fact Applicant had the Jordanian passport. He renewed his Jordanian passport in 2007, and it is valid until 2012. He disclosed the Jordanian passport on his 2007 SCA. None of

his supervisors between 1975 and 2004 knew he had a Jordanian passport in addition to his U.S. passport. (Tr. 133-136, 203-208)

Applicant's wife was born in Jordan and became a naturalized U.S. citizen in 1982. She maintains dual citizenship with Jordan. Applicant and his wife married in 1976 after meeting in 1975 in Jordan on a trip he took to Jordan to see his family. He traveled to Jordan in 1976 to get married. His wife has 13 siblings who live in Jordan. Both of her parents are deceased. Applicant's wife visits with her siblings when she travels to Jordan. His wife has a Jordanian passport and a U.S. passport. She uses the Jordanian passport to enter Jordan, and shows the U.S. passport at the same time to the border officials in Jordan. Applicant follows the same practice on his trips to Jordan. (Tr. 127, 141-156; Exhibit 1)

Applicant has six sisters. Two sisters live in the United States. Three sisters live in Jordan. One of those sisters is married to a retired Jordanian Army colonel or general. Applicant is not certain about his retired brother-in-law's military rank. The daughter of another sister living in Jordan is the secretary for a Jordanian Army general. She is eligible to retire from that job. The sixth and youngest sister lives in Dubai with her husband who is a civil engineer. Applicant speaks with his sisters often. He spoke with his oldest sister in Jordan the weekend before the hearing. Applicant also had a brother-in-law who was an advisor to the late King Hussein of Jordan. This relative died in the 1920s. Applicant has 2500-3000 extended family relatives in Jordan. (Tr. 163-187; Exhibits 1-4, B and G)

Applicant has two brothers living in the United States. They are naturalized U.S. citizens, and maintain dual Jordanian-U.S. citizenship. Applicant disclosed these brothers and his two sisters living in the United States on his 2007 SCA, but did not disclose his other siblings, claiming that the question only inquired about those relatives who had U.S. citizenship and lived in the United States. Applicant's mother, who died in 2007, also had dual Jordanian and U.S. citizenship. His late father also had dual citizenship. (Tr. 131, 158-160, 168, 169, 198; Exhibits 1-4, B and G)

Applicant owns his home estimated to be worth about \$150,000. He has about \$60,000 in savings in the United States, and about \$80,000 in his Thrift Savings Plan. He inherited land from his father in Jordan, valued at about \$20,000. He inherited from his mother a commercial building, in joint tenancy with his brothers, in Jordan, and his share is worth about \$40,000 he estimates. Applicant keeps his Jordanian passport because he needs it to protect his inheritance, and to be able to buy and sell property in Jordan, or so he understands Jordanian law to be. About a month before his hearing, he asked his ill sister in Jordan to try to sell his interest in the commercial building for him. Neither of his two brothers is interested in buying his share of the building. (Tr. 156, 157, 189-202; Exhibits 1-4, B and G)

Applicant traveled to Jordan in 1975, 1976 to get married, in 1993, 1995, 1998, and 1999 when his father died. These trips were made for the purpose of Applicant visiting his family members. (Tr. 123, 137, 138, 144; Exhibits 1-4, B and G)

Six of Applicant's supervisors and co-workers testified for him at the hearing. Ten other persons submitted character statements. The persons who testified worked with Applicant for four to 20 years, and opined Applicant's work ethic is very high, and that he is honest and trustworthy. They recommend Applicant receive a security clearance. Applicant also submitted several certificates of appreciation and performance rewards. (Tr. 50-112; Exhibits C and D)

I take administrative notice of the following facts pertaining to Jordan. The country of Jordan's government is a constitutional monarchy in the Middle East. The government has a Council of Ministers appointed by the King of Jordan. The bicameral legislature is partially elected, with an appointed Senate and elected Assembly. Jordan is pro-Western in its foreign policies, and has had close relations with the United States for 60 years. It has been an independent country since May 1946. Jordan fights terrorism, but has some human rights issues which include torture, arbitrary arrest, prolonged detention, denial of due process, and restrictions of freedoms of press, speech, assembly, and movement. The threat of terrorism remains high in Jordan. Terrorist groups conduct intelligence gathering operations in Jordan, to undermine U.S. interests. Jordanian law also allows any male Jordanian relative to prevent a woman or child from leaving Jordan, even if they are U.S. citizens. Jordan also regards dual Jordanian-U.S. citizens as Jordanian citizens. (Exhibit 5, parts I to VI)

### **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 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, and has the ultimate burden of persuasion to obtain 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 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, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes four conditions that could raise a security concern and may be disqualifying:

(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; and,

(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.

Of these four security concerns, the facts of Applicant's case show ¶ 10 (a) (1) (possession of a foreign passport) and (a) (5) (using foreign citizenship to protect financial or business interests in another country, i.e., Jordan) apply. Applicant has held a Jordanian passport, unbeknownst to his supervisors over the past 30 years, since he came to the United States. He did not disclose the existence of that passport in 2001 when his security clearance was renewed, having answered Question 14 on his SCA that year with a negative answer. Applicant does not want to surrender his Jordanian passport because he believes it protects his right to hold real estate in Jordan, including the \$60,000 worth of land and commercial building he owns there. He admits he uses his Jordanian passport as the primary document to travel to Jordan, showing the border officials his U.S. passport as an adjunct document only during travel to Jordan.

AG ¶ 11 provides conditions that could mitigate security concerns arising under this guideline:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority.

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

Of these mitigating conditions, only ¶ 11 (a) (dual citizenship based solely on his parent's citizenship or birth in a foreign country) has potential applicability. However, because he continues to possess and use his Jordanian passport, it is not applicable. This condition has only limited applicability. None of the other mitigating conditions apply.

## **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(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;

(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;

(c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(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;

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;

(f) failure to report, when required, association with a foreign national;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and,

(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.

Applicant has contacts with his siblings living in Jordan. He admits he has a large family network in Jordan, consisting of 2,500 to 3,000 relatives. His wife, a dual citizen of Jordan and the U.S., also has a large family in Jordan. Applicant is trying to get his sister in Jordan to sell his share of the real estate there which he owns. Therefore, ¶ 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) applies. Applicant could be subject to pressure or coercion, manipulation or inducement to his attempts to sell his property and liquidate his \$60,000 interest in the real estate. He also has relatives whose spouses had high level positions in the Jordanian government and military forces, or whose family members work for those governmental units.

Applicant lives with his wife, a dual citizen of Jordan and the United States. Therefore, he is sharing living quarters with a person, which creates a heightened risk of foreign inducement, manipulation, pressure or coercion because of his wife's familial connections in Jordan. ¶ 7 (d) applies.

Finally, and most importantly, Applicant has substantial business, financial, or property interests in Jordan, or in any foreign-owned or foreign-operated business,



which could subject the individual to heightened risk of foreign influence or exploitation. Applicant has \$60,000 worth of ownership interest in real estate and rental property in Jordan. His U.S. savings account has the same amount, so this real estate value is considerable when compared to his U.S. financial holdings. In an area in which terrorists are active who do not like the United States or its policies, Applicant, as a dual citizen, could have his property subject to a great risk of influence or exploitation. In his efforts to protect or sell the property, he might be induced to make decisions contrary to best interests of the United States.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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.;

(b) 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests are such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Of these mitigating conditions, only ¶ 8 (b) might have some limited applicability because of Applicant's long-standing connections to the United States, his 29-year work history for the U.S. Army, his ownership of a home and savings accounts in the United States, and his long history of quality work at his job until his retirement in 2004 as attested to by his co-workers. But, those facts are counterbalanced by Applicant's possession and use of a Jordanian passport after becoming a U.S. citizen in 1974, his failure to disclose the possession of that passport all the years he worked for the U.S. government to his supervisors, and especially in 2001 on his SCA, along with his adamant refusal to surrender that passport until he decides he does not need it

anymore to protect his financial interests in Jordan. He is acting in his own personal interests by making that decision.

It should also be noted that Applicant did not disclose his foreign-residing siblings on the 2007 SCA. On the 2001 SCA he does not disclose his Jordanian passport, and on the latest SCA he does not disclose relatives living in Jordan. There is a pattern of non-disclosure exhibited by Applicant which causes a heightened security concern. Lastly, none of the remaining mitigating security conditions are applicable.

### **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 commonsense 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. Possessing a foreign passport without disclosing its existence for 30 years by a Government employee involved in the work Applicant performed, for which he was paid a salary and now receives a pension, while possessing a security clearance, is very serious conduct of long duration. Applicant knew what he was doing, yet did it to protect whatever interests he might have in Jordan for his own financial and personal interests. During all this time Applicant was a highly-educated scientist and Government employee. He refuses to surrender the passport, showing there is no behavioral change or attempts to mitigate his conduct. There is a great likelihood for pressure, coercion, exploitation or duress as Applicant seeks to sell his interests in the real estate he owns in Jordan, with all its troubles in the present economic situation, if in fact he is trying to sell it. Asking a sick sister a month before the hearing is not a diligent or sincere effort to sell real estate. His security concern will continue until Applicant decides he no longer needs the passport, but based on his long-term retention of the Jordanian passport, it is highly unlikely he will ever surrender this passport.

I considered his work history and the recommendations of his co-workers and supervisors. His good work performance over the years is insufficient to overcome Applicant's insistence on retaining his foreign passport even if granted a security clearance. Nor is it sufficient to overcome Applicant's extensive network of family relations in Jordan, including the several relatives who served in high military positions, and some of whom continue to work for the Jordanian government.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his foreign preference and foreign influence security considerations. I also conclude the "whole person" concept against Applicant.

### **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 C:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant

### **Conclusion**

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

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PHILIP S. HOWE  
Administrative Judge