



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



In the matter of:)
)
-----) ISCR Case No. 08-01074
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: Yakeen Qawasmeh, Personal Representative

September 29, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on November 13, 2006. On April 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. 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.

The Applicant responded to the SOR on April 25, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on May 27, 2008. It was transferred to the undersigned on June 17, 2008. A notice of hearing was issued on July 8, 2008, scheduling the hearing for July 31, 2008. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant called one witness, presented twelve exhibits and testified on his own behalf. The record remained open until close of business on August 21, 2008, to allow the Applicant the opportunity to

submit additional documentation. The Applicant submitted five Post-Hearing Exhibits referred to as Post-Hearing Exhibits 1 through 5. The official transcript (Tr.) was received on August 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Jordan. The Applicant and his personal representative had no objection. (Tr. p. 14). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 52 years of age. He is employed as a Production Supervisor for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Jordan in 1956 to Jordanian parents. He grew up in Jordan, and at the age of fourteen moved with his family to Kuwait. In 1985 [Should this be 1975?], the Applicant came to the United States with a student visa to go to school and pursue the American dream. That same year [Can't become citizen same year you move here.], he became a naturalized United States citizen. Although he still thought of himself as a dual citizen of the United States and Jordan, until recently. Since becoming aware of DoD's policies concerning dual citizenship, the Applicant has formally renounced his dual citizenship with Jordan. (See Applicant's Post-Hearing Exhibits 1 through 5).

The Applicant is married to an American citizen and they have three children who are all American citizens attending college. None of them speak arabic. The Applicant's in-laws also reside in the United States. The Applicant also has one brother who resides and is a naturalized citizen of the United States who has lived here for thirty years.

The only immediate family that the Applicant has in Jordan is one brother and one sister, who are citizens and residents of Jordan. He contacts them by telephone occasionally, about three or four times a year. His brother is retired from a trucking company, and his sister is a homemaker. In the past, he sent monetary gifts to his siblings to help out with funeral expenses but is not obligated to continue to do this. They are not affiliated with the Jordanian Government in any respect. The Applicant has many extended family members who have the same last name as the Applicant but

whom he does not know or have any affiliation with. The only financial interest he had in Jordan was an interest in a parcel of land he shared with his siblings and cousins, once owned by his father. The land is located in Jordan on the West Bank and the approximate value of the land is \$20,000.00. The Applicant has since transferred that interest and no longer owns it. All of his financial interests and assets are in the United States that include a house, a retirement fund from his employer.

Since moving to the United States, the Applicant has traveled to Jordan on four occasions, 1977, 1980, 1994, and 2007. He attended a family reunion on one occasion and on the other two occasions went to handle emergencies. One time he thought that his mother was dying, and the other time his sister was in a coma and did pass away.

In 2008, the Applicant assisted the FBI when he reported that he noticed activities that he thought would be harmful to the United States. (Tr. p. 73). The individual involved is now serving jail time.

The Applicant began working for his current employer in 1997 and applied for a Secret level security clearance at that time. He was initially denied a clearance but appealed and voluntarily underwent a Anti-Terrorism and Anti-Espionage polygraph exam. He was subsequent granted his clearance and has held it without incident.

Paragraph 2 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant used his American passport on two occasions to enter and exit Jordan, but during his most recent trip he used his Jordanian passport. (See Government Exhibit 2). The Applicant was not aware that by renewing his Jordanian passport his security clearance could be in jeopardy. When learning of DoD's policy concerning possession of a foreign passport, the Applicant surrendered his passport to the Security Officer at his company. (See Applicant's Exhibit I). Since then, the Applicant has gone even a step further and has completely destroyed his Jordanian passport once and for all. (See Applicant's Post-Hearing Exhibits 1 through 5).

The Applicant has fully assimilated into the American culture and is involved in his community. He has coached basketball and helped with the Special Olympics. (See Applicant's Exhibit J). He has volunteered to feed the homeless and after 9-11 started working at churches to hold memorials for the victims. He is active in state politics and votes in every election.

The United States Department of Justice, Federal Bureau of Investigation award was issued to the Applicant for his outstanding assistance in connection with their investigation dated June 2008. (See Applicant's Exhibit L).

Various letters of recommendation from the Applicant's community leaders, including the mayor, a religious leader, his neighbors and friends attest to the Applicant's kindness, respectful attitude, community service, good judgment, and honest and forthright nature. They consider him to be a very honorable and respected

man who loves the United States for the freedoms and opportunities it has afforded him and his family. (See Applicant's Exhibits B, C, D, E, F, G and H).

ADD INFORMATION ON JORDAN

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

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.;

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.

Foreign Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Condition that could raise a security concern:

10. (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.

Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

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

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

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. Mitigating Conditions 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. and 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 applies.

It is acknowledged that the Applicant has a brother and a sister who reside in Jordan and that he contacts on an occasional basis. In the past, he has sent money to them to help with funeral costs. Although he has extended family members in Jordan, he has no association with them whatsoever, or any allegiance to them, or with the Jordanian Government. It is noted that the current political situation in Jordan elevates the cause for concern in this case. However, in this case, the Applicant has lived in the United States for the past thirty years. He has been a resident and citizen of the United States for 23 years. He has a wife and three children who are American citizens. All of his financial assets are in the United States. He has fully in cultured himself well into American values and the American culture. He participates in his local community, and has even been commended by the FBI for assisting them in the past. Under the particular facts of this case, the possibility of foreign influence does not exist nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Under Foreign Preference, Disqualifying Condition 10(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* applies. However, Mitigation Conditions 11(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country*, 11(b) *the individual has expressed a willingness to renounce dual citizenship*, and 11(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* also apply.

The Applicant was a dual citizen of Jordan and the United States. Since then [when?] he has formally renounced his Jordanian citizenship and destroyed his Jordanian passport. Except for his two siblings in Jordan, he has essentially cut all ties to that country. Under the circumstances of this case, I find for the Applicant under Guideline C (Foreign Preference).

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines B and C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant

Paragraph 2: For the Applicant.
Subpara. 2.a.: For the Applicant
Subpara. 2.b.: For the Applicant
Subpara. 2.c.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge