



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03911
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: Binh T. Bui, Esquire

January 12, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on May 1, 2007. On August 13, 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.

Applicant replied to the SOR (RSOR) in writing on August 29, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on October 6, 2008. DOHA issued a notice of hearing on October 9, 2008, and I convened the hearing as scheduled on November 6, 2008, in San Diego, California. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and had one additional witness testify. Through counsel, he also submitted Exhibits A through F. Exhibit E was objected to as being

partially written in a language other than English. The record was kept open to allow Applicant to submit a translated copy of Exhibit E, but no document was received. Therefore, Exhibits A through D and Exhibit F have been admitted into evidence, but Exhibit E is not admitted, and I have not considered this exhibit in this decision. DOHA received the transcript of the hearing (Tr) on November 14, 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 relating to the Palestinian Territories. The request and the attached documents were admitted into evidence as Exhibit 5. The facts that have been administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant and the other witness, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 27 years old and was born in Kuwait in 1981. He has been a United States citizen from birth since his father was a U.S. citizen. His mother was born in Bethlehem, but Applicant does not believe that she is a citizen of Palestine, nor is he aware of any other country of which she is a citizen. At 9 years of age he moved with his family to Bethlehem, where he stayed for eight years. He moved to the United States when he was 17 years of age in 1998, to pursue his studies. Applicant received a Bachelor of Science degree in 2006, from a United States university.

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline C - Foreign Preference)

1.a. It is alleged in the SOR that Applicant exercised dual citizenship with Palestine and the United States. Applicant contends that he has not engaged in any of the responsibilities or duties of being a citizen of Palestine, nor does he consider himself to be a dual citizen of Palestine and the United States. Rather he only consider himself a U.S. citizen, since when he was born his father was a U.S. citizen and he was not aware of any citizenship status of his mother. He did not believe that his mother was a citizen of Palestine. He testified that he never applied to become a Palestinian citizen.

Applicant did however, apply for and receive a passport from the Palestinian authority, even though he was a United States citizen, which is alleged in the SOR as 1.b., and which will be reviewed below. This appears to be the only example of Applicant exercising citizenship from a country other the U.S.

1.b. It is alleged in the SOR that Applicant applied for and was issued a Palestinian passport, on October 28, 2005, even though he had become a United States citizen on May 18, 2001. The record is clear that when Applicant was born, his father was a United States citizen, so Applicant was born a U.S. citizen.

Applicant testified that in 2005, he entered Israel to visit his mother in Bethlehem, with his U.S. passport, and he had planned to exit with the same passport. He stated that he was informed by a representative of the Israeli government that he would need to obtain a Palestinian passport for him to exit Israel. Applicant testified that the only reason that he applied for this passport was to exit Israel. He only used it on that one occasion in 2005 when he left Israel.

1.c. It is alleged in the SOR that Applicant used his Palestinian passport on October 2005, to enter and exit Israel, instead of his U.S. passport. Applicant testified that he did not use his Palestinian passport to enter Israel, but only to exit it, as he was informed it was required.

1.d. It is alleged in the SOR that Applicant continues to maintain his active Palestinian passport because he expects to inherit family property in Palestine. Applicant testified that his Palestinian passport has expired, and it is now being held by the facility security officer of his employer. Exhibit C is a copy of that passport, which shows that it expired on October 27, 2008.

Applicant stated that while he might inherit part of a piece of property that had been held by his grandfather, since he would be one of many who would potentially share the inheritance, he did not expect its value to exceed \$1,000.

I can not find that Applicant's application and receipt of his Palestinian passport, in the way described above, indicated a preference for another country over the United States or exhibited the exercise of dual citizenship with Palestine and the U.S.

Finally, while Applicant testified that he does not consider himself a citizen of Palestine, he did testify that he would be willing to renounce his Palestinian citizenship, if it was established that he was a citizen of Palestine.

When he was questioned as to what he would do if a representative of a terrorist group in Palestine threatened his family in Palestine if he did not cooperate with them, he testified, "I would consult with the U.S. Government in the first place and see what they have – I wouldn't react on my own." (Tr at 83-84).

Paragraph 2 (Guideline B - Foreign Influence)

2.a. It is alleged in the SOR that Applicant's mother is a dual citizen of Palestine and the U.S., and resides in the United States. Applicant confirmed that his mother, who is 53 years old, resides in the United States, and she has been a legal resident of the U.S. since 2006. He testified that she was born in Bethlehem at the time it was part of

Jordan, so it is not clear what her present country of citizenship is. However, she does plan to become a U.S. citizens when she meets the eligibility requirements.

2.b. It is alleged in the SOR that Applicant's sister is a dual citizen of Kuwait and the U.S., and resides in the United States. Applicant testified that his sister and brother were born in Kuwait, but are not Kuwaiti citizens, only citizens of the U.S. They both reside with him and his mother in the U.S., and all three of them are full time students in the U.S.

Applicant's mother has three brothers, and there are three brothers of his deceased father, all of whom are U.S. Citizens, residing in the U.S.

2.c. Applicant traveled to Palestine in October 2005, to visit his relatives, primarily his mother. As discussed above, all of his closest family now reside in the U.S.

One witness testified on behalf of Applicant. She extolled his virtues including his honesty and innocence.

History and Current Status of Palestine

I take administrative notice of the following facts regarding Palestine. Palestine is a territory , created following World War I, as a 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, Syria, and Lebanon.

In January 2006 Palestinian legislative election, an opposition party, Hamas, formed a government without Fatah, the former ruling party within Palestine as part of the Palestinian Liberation Organization (PLO). The United States has designated Hamas and six other Palestinian groups as Foreign Terrorist Organizations.

In February 2007, Hamas and Fatah signed an agreement to form a national unity government. However, in June 2007, factional fighting broke out and Hamas took complete control of the Gaza strip. Fatah retained control over the West Bank.

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. . . ." 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 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."

Applicant's application and receipt of an Palestinian passport raises foreign preference concerns under Disqualifying Condition DC 10 (a), the exercise of the privilege of foreign citizenship.

However, Applicant only applied for the foreign passport when he was told it was necessary to exit Israel. He has never used it since that time, and it has now expired and it is in the possession of his facility security officer. Additionally, while he does not consider himself to be a citizen of Palestine, he indicated that he would renounce his Palestinian citizenship to the proper authorities, if it was shown that he was a citizen of Palestine. Therefore, I find that Mitigating Conditions (MC) (b) and (e) under this guideline apply to this case. After considering all of the evidence of record on Guideline C, I conclude that the mitigating evidence substantially outweighs the disqualifying evidence.

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 (DC). Those that could be applicable in this case include the following: (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 mother, whose citizenship is not clear, and sister, who appears to be a dual citizen of Kuwait and the U. S., although they both now reside in the U.S. with plans to remain here may make DC (a) of concern to the Government.

AG ¶ 8 provides conditions that could mitigate security concerns (MC):

(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.

I find that MC (b) is applicable to this Applicant and strongly controlling for the following reasons: Applicant, who is 27 years old, immigrated to the United States when he was 17 and has lived here since then. He was born a U.S. citizen, since his father was a U.S. citizen. He received a college degrees in the U.S. While he did not consider himself a dual citizen of Palestine, since he did not believe that his mother was a Palestinian citizen, he did indicate a willingness to renounce any citizenship of Palestine. He only applied for a Palestinian passport, because he was informed that it was required for him to exit Israel, and he has never used it again. The Palestinian passport has now expired. Finally, all of his close family members now reside in the United States. I therefore, conclude Guideline B for Applicant.

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) 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. Based on all of the reasons cited above as to why MC (b) and (e) apply under Guideline C and MC (b) applies under Guideline B, I find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant mitigated the security concerns.

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:	FOR APPLICANT
Subparagraph 1.a. through 1.d.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a. through 2.c.:	For Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge