



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-04328

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: William Savarino, Esquire

June 24, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Statement of the Case

On June 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs), effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR on July 30, 2009, and requested a hearing. The case was assigned to me on September 9, 2009, and was scheduled for hearing on October 7, 2009. At the scheduled hearing, Applicant asked for a continuance to obtain counsel. Applicant's hearing request was granted. The case was rescheduled for hearing on December 8, 2009.

The hearing was held as rescheduled. At the hearing, the Government's case consisted of four exhibits. Applicant relied on one witness (himself) and nine exhibits. The transcript (Tr.) was received on December 17, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Besides its four exhibits, the Government requested administrative notice of six documents pertaining to the country of Jordan: *Background Note: Jordan*, U.S. Department of State (February 2009); *Country Specific Information: Jordan*, U.S. Department of State (May 2009); *2008 Human Rights Report: Jordan*, U.S. Department of State (February 2009); *Country Reports on Terrorism 2008, Chapter 2-Country Reports*, Middle East and North African Overview (April 2009); *Statement for the Record from the Counterintelligence Executive*, Before the House Judiciary Subcommittee on Immigration, Border Security and Claims (September 2005); *Annual Threat Assessment of Intelligence Community*, Director of National Intelligence (February 2008).

The Government also sought administrative notice of ten documents relative to the country of Israel: *Background Note: Israel*, U.S. Department of State (October 2007); *CRS Report for Congress: Israel: Background and Relations with the United States*, Congressional Research Service, Report RL 33476 (April 2009); *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2000*, National Counterintelligence Center; *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005*, National Counterintelligence Center (August 2006); *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2007* (September 2008); *National Counterintelligence Center; Intelligence Threat Handbook, June 2004*, Interagency OPSEC Support Staff (IOSS); *California Exporter Settles Criminal and Civil Charges for Illegal Exports of High Performance Oscilloscopes to Israel*; U.S. Department of Commerce (April 2005); *Minnesota Company Settles Charges Relating to Illegal Exports to Israel*; U.S. Department of Commerce (April 2005); *Israeli Man Settles Charges of Concealing Material Facts*, U.S. Department of Commerce (April 2002); *Arizona Company Settles Charges of Illegal Exports of Lasers*, U.S. Department of Commerce (May 2001).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007); Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situations in Jordan and Israel, respectively.

Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing the current status of Jordan and Israel.

Procedural Issues

Prior to the close of the hearing, Department Counsel moved to withdraw the allegations set forth in subparagraph 2.d for reasons that the alleged friend is his wife. There being no objections, and good cause demonstrated, Department Counsel's withdrawal motion was granted.

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with his canceled U.S. 2003 passport. For good cause shown, Applicant was granted ten days to supplement the record. Within the time permitted, Applicant provided a copy of his cancelled U.S. passport. Department Counsel did not object to Applicant's post-hearing submission, and for good cause shown, the submission is admitted as exhibit J.

Summary of Pleadings

Under Guideline E, Applicant is alleged in the SOR to have: (a) falsified his resume in 2001 to get a job with a state transportation department; (b) been re-assigned by his employer as a linguist in May 2005, while working in Qatar, because of allegations made by his former fiancée, a foreign national, that he had revealed sensitive work information to her; (c) obtained a new U.S. passport, in approximately February 2006, by falsifying material facts by stating his U.S. passport was stolen, and failing to truthfully disclose his passport had been confiscated; and (d) been denied a contract linguist position by the U.S. Army in January 2007 based on a finding that he presented a security risk.

Under Guideline B, Applicant is alleged in the SOR to have: (a) a spouse who is a citizen of Jordan residing in Israel; (b) a sister who is a citizen of Jordan, residing in Qatar; (c) a friend, who is a citizen of Jordan, residing in Qatar; (d) a friend, who is a citizen of Palestine, residing in Jordan; (e) a mother-in-law who is a citizen of Jordan, residing in Israel; (f) three brother-in-laws and five sisters-in-law who are citizens of Jordan, residing in Israel; (g) four aunts and an uncle of his wife, who are citizens of Jordan, residing in Israel; (h) renewed his residency status or visa in Bahrain for continued employment in Qatar; (i) traveled to Jordan and Israel from December 2005 to February 2006 to visit his sister and his wife; and (j) traveled to Israel in January 2007 to get married.

In his response to the SOR, Applicant admitted most of the allegations. He denied falsifying his resume revealing sensitive information to his former fiancée, and falsely claiming his U.S. passport was stolen. He added no explanations.

Findings of Fact

Applicant is a 51-year old linguist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in Kuwait. He immigrated to the United States (U.S.) from Jordan in 1979 on a student visa. See Ex. 4. Applicant became a naturalized U.S. citizen in February 1993. See Exs. 1 and 4. He maintains no dual citizenship and has a degree in architectural design drafting. Ex. 1.

Applicant has been married four times. See Exs. 1 and 2. He married W1, a U.S. citizen, in 1985. According to the information provided an investigator from the Office of Personnel Management (OPM) in June 2007, they divorced in 1991 over marital differences. Ex. 2. He has no children from this marriage. Applicant married again in 1993 to W2. He divorced her in Egypt in 1994 and has no children from this marriage.

In 1996, Applicant married W3. Ex. 2. They encountered irreconcilable differences and attempted a divorce in 2003. When they learned that their attempts at divorce were invalid, they arranged for formal divorce in September 2006. Exs. 1 and 2. Applicant attributes his divorce from W3 to family stress and logistical problems. He blamed W3 for taking away his citizenship papers and his U.S. passport. Ex. 2. They have no children from their marriage.

Applicant married his current spouse (W4) in February 2007 after a two-year engagement. He met W4 in an internet exchange in July 2005 and twice visited her (in the U.S. and Israel) before she came to live with him in March 2007 (following their marriage). See Exs. 1 and 2; Tr. 91, 119. They have two children. Ex. 1; Tr. 92. W4 is a citizen of Jordan who works for the U.S. AID mission in Jerusalem, where she has resided since she and Applicant first met in 2005. Exs. C, E, and F. She holds a permanent resident card that was issued to her by the Israeli government in October 2009. See Exs. 1, 2, 4, and D.

Applicant's parents were born and raised in Palestine and are deceased. Ex. 1. He has two sisters. See Exs. 1 and 2; Tr. 123-24. Both are Jordanian citizens. One resides in Great Britain and has dual citizenship status with Great Britain and Jordan. See Exs. 1 and 2. The other resides in Jordan. Neither of his sisters have any associations with any government or military organization. Tr. 97, 106-07. Applicant also has a close friend who is a citizen of Jordan residing in Qatar. See Ex. 4.

W4's mother is a citizen of Jordan who resides in Israel with W4. Tr. 96-97. W4 has three brothers and five sisters who are citizens of Jordan and reside in Israel. See Exs. 1 through 3; Tr. 99-100. None of W4's brothers and sisters, or their spouses, have any associations with any government or military organization. Tr. 101-02. W4 also has four aunts and an uncle who are citizens of Jordan residing in Israel. See Exs. 1 and 2; Tr. 103-04.

Applicant communicates with W4 regularly and maintains monthly contact with his sisters. Occasionally, he communicates with his wife's siblings. See Exs. 2 and 4; Tr. 112-13. He has infrequent contact with the rest of his wife's family members and his friend. Ex. 2; Tr. 113-15. Between December 2005 and February 2006, he traveled to Jordan and Israel to see his sister and W4. He returned to Israel in January 2007 to marry W4. None of W4's family members have ever visited Applicant in the U.S. Tr. 123.

Since January 2007, Applicant has not traveled to Jordan, Israel, or any country in the Middle East, for any reason. Applicant has no reason to believe that any of his family members residing in Jordan or Israel are at any risk to pressure, compromise, or coercion. See Exs 2 and 4.

Applicant's work experience

Before Applicant accepted his present linguist assignment, he held linguist positions with several contractors. Between May 2001 and January 2002, he was employed by a large state transportation agency as an engineer. In his employment application with the agency, he claimed to have a basic knowledge of and familiarity with Microsoft hardware (including excel programs) and excellent work experience. See Ex. 2; Tr. 49-52, 133-35. Based on his assurances, he was hired as a transportation engineer with the state agency. Exs. 1 and 2. Shortly after his hire, and during his probation period, he encountered difficulties in excel work on his assigned computer. Asked by his supervisors why he claimed excel training and experience, Applicant responded that he did not know he put in for a higher grade position and believed he would get some excel training. Ex. 2. Applicant acknowledged that his supervisor did not accept his explanation, and accused him of lying. Tr. 56-57. As a result of this encounter, Applicant's state employer issued a notice of rejection to him. See Exs. 4 and B; Tr. 58-59. Rather than challenge his rejection, he resigned his position. Tr. 59-60, 202.

Applicant was unemployed for most of the two years spanning January 2002 and February 2004. Ex. 1. Between February 2004 and May 2005, he worked as a linguist for a language consultant with the U.S. Embassy in Qatar See Exs. 1 and 2; Tr. 148. In May 2005, he was re-assigned by his employer due to an argument with his supervisor and allegations made by his former fiancée (previously disclosed to employer), a foreign national, that he had divulged sensitive information to her. See Exs. 2 and I; Tr. 150-51. While Applicant retreated some from his earlier explanations of his reassignment when pressed for reasons at hearing, his initial explanations offer the most plausible reasons for his re-assignment and ultimate departure from the language consulting firm he worked for and are accepted. What disclosures his fiancée might have made to U.S. Embassy officials to prompt his re-assignment is not known, but were apparently serious enough to warrant corrective action by his employer, Applicant's denials notwithstanding. Tr. 65-66.

Following his re-assignment and departure from his linguist position in Qatar, Applicant could not find suitable employment. Over the course of the year (between May

2005 and April 2006), he was unemployed for the most part. During his extended period of unemployment, he received \$1,000 a month in unemployment benefits. See Ex. 4.

In April 2006, Applicant returned to the same state transportation agency he worked for in 2001. In his telephone interview with an agency head, he failed to disclose his prior employment with the agency and the circumstances in which he reassigned. Tr. 69-70. Applicant's supervisor claimed he lied to him and issued a notice of rejection in July 2006. See Exs. 2 and B; Tr. 68-69. The agency proceeded to separate him from service. Tr. 70-72.

Claiming he listed his prior employment with the agency in his employment application, Applicant challenged his latest rejection and reached a settlement with the state agency in October 2007. See Ex. B; Tr. 66-67, 71-72. By the terms of his settlement, Applicant was placed on unpaid leave of absence from July 2006 through June 2007. The agency, in turn, agreed to assign 11 days of paid administrative time for each monthly pay period between July 2007 and June 2010. See Ex. B. For his part, Applicant agreed in advance to resign from the state agency, effective June 2010, withdraw all appeals, and to avoid any future application or acceptance of employment from the state agency in the future. Ex. B.

Applicant interviewed for a contract linguist position with the U.S. Army in January 2007. See Ex. 4. During his interview, he changed his answers numerous times and, according to the Army's investigation record, lied several times during the interview. Following the interview, the Army noted the absence of any national agency check and an incomplete national criminal information center check and found Applicant to present counterintelligence and foreign preference risks. Ex. 4. Based on its findings, the Army concluded that Applicant should not be considered for a position of trust with the U.S. Government. See Ex. 4.

Passport issues

Applicant was issued a U.S. passport when he became a naturalized citizen in 1993. This passport expired in February 2003 and bears two cancellation stamps: one in January 2003 and another on March 12, 2003. See Ex. G. Circumstances surrounding these dual cancellation dates are not clear. The first one cites a new application, which would appear to corroborate Applicant's claims that he obtained a new passport to replace his initial one that was scheduled to expire in February 2003. See Exs. 4 and G.

In late March 2003, Applicant became embroiled in a heated argument with W3 over his planned deployment to the Middle East. See Ex. A. He reported in a March 5, 2003 police report that W3 took his items of identification (*i.e.*, his passport, his driver's license, and his social security card). Ex. A. Whether she took his old canceled passport or his newly issued one is not clear. Applicant did not provide any documented explanations in his Army interview and hearing of whether the taken passport was his cancelled one or a freshly issued passport. Nor did he provide any details of when he obtained a new one. Piecing together the March 12, 2003 date stamp on his old passport

and his very limited accounts in his Army and OPM interviews, inferences may be reasonably drawn that he applied for and obtained a third passport in March 2003. Compare Exs. 2 and 4 with G.

Shortly after obtaining his third U.S. passport in March 2003, Applicant claimed he recovered the passport his fiancée had previously taken from him. Tr. 75-77, 82. He recollected that he returned to the Post Office to obtain a cancellation of his recovered passport. By all reasonable accounts, Applicant kept both his old Jordanian passport and his canceled U.S. passport. He provided no meaningful explanations as to why he determined to retain possession of them.

On June 9, 2005, Applicant reported to the local police in another state that his old Jordanian passport and his U.S. passport had been stolen from his briefcase (along with his deployment papers) during his short stay at a local motel in the evening of June 3, 2005. See Ex. 3. In a follow-up June 14, 2005 police report, he told police that he still retained his current U.S. passport. Ex. 3. Police returned the following day to take a third account from Applicant about his stolen passports. In this revised account, he confirmed that his two old passports were never found. Ex. 3. Then, in a fourth and final revised account of his passport theft on June 27, 2005, he advised investigating police that he found both expired passports. However, he did not provide any details of how he found his two old passports.

When asked what he did with his recovered Jordanian and U.S. passports, Applicant responded that he shredded his Jordanian passport and returned it to the Jordanian Embassy, without providing any documentation of his actions. By contrast, he assured that he retained his canceled U.S. passport. Tr. 161. Applicant provided no further details of why he retained his canceled U.S. passport. Tr. 159-61.

Between December 2005 and February 2006, Applicant traveled to Jordan and Israel to visit his sister and W4 (his girlfriend at the time). He used his recovered current passport from March 2003 to enter and exit the countries. Tr. 80-81. When departing Israel in February 2006, he was detained by Israel airport personnel and questioned about the expired U.S. passport he possessed. Ex. 4; Tr. 120, 190. By the time of his departure from Israel, his U.S. passport had expired. When he arrived back in the U.S., he was detained again by airport personnel. He told the Army interviewer that his expired U.S. passport was confiscated by airport personnel. See Ex. 4. His story changed some, however, when he was asked about the passport at hearing. At hearing, he assured his passport was marked canceled and returned to him. Tr. 81. He documented his claims after the hearing with a copy of his canceled U.S. passport that bears a February 24, 2006 cancellation date. See Ex. J.

Shortly after he returned from Israel in February 2006, Applicant applied for a new U.S. passport from a local post office. Tr. 83-84. To obtain a new passport, he falsely told post office personnel that his U.S. passport had been stolen. See Ex. 4; Tr. 84. What he did not tell responsible post office personnel was that his U.S. passport had earlier been confiscated by airport personnel and canceled at the airport. See Exs. 4 and J. Applicant

provided no convincing explanations to avoid drawn inferences that he misstated the circumstances about his loss of his U.S. passport when he applied for a new passport. Tr. 84-86. He essentially misled post office personnel to ensure his application for a new passport would be expeditiously approved. This drawn inference is fully supported by the accounts contained in the Army's investigation file and Applicant's own testimony.

Jordan's country status

Jordan occupies a small land area in the Middle East that once was part of the historical Fertile crescent region. See *Background Note: Jordan, supra*, at 2. Jordan has a constitutional monarchy based on its constitution promulgated in January 1952. *Id.*, at 3. It is a quite small country with limited natural resources, especially its water supplies. Its economy is a developing one that relies heavily on imported oil supplies. See *Administrative Notice: Jordan*, at 1-2. Jordan is ruled by King Abdullah II, and has a council of ministers who are selected by the King. See *Background Note: Jordan, supra*, at 1-4. Jordan also has a partially elected bicameral National Assembly. *Id.*, at 3-4.

From 1949 to 1967, Jordan administered a territory known as the West Bank. See *Background Note: Jordan, supra*, at 2. Since the 1967 war, when Israel assumed control of the territory, the U.S. has considered the West Bank to be territory occupied by Israel. *Id.*, at 2. The U.S. continues to believe that the final status of the West Bank can be determined only through negotiations among the concerned parties based on United Nations (UN) Security Council Resolutions 242 and 338. *Id.*

For over sixty years, Jordan has maintained a close alliance relationship with the U.S. However, it has had something of a turbulent history since it signed a mutual defense pact in May 1967 with Egypt. *Background Note: Jordan, supra*, at 1-4.

Despite some noticeable improvements in certain areas, Jordan's human rights record continues to be problematic. See *2008 Human Rights Report: Jordan, supra*, at 1-2. Problems include torture, arbitrary arrest, prolonged detention, overcrowded prisons with poor sanitary conditions, denial of due process, infringement on citizen's privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement. *Id.* The UN reports widespread use of torture by police and security forces in the country, and there has been some substantiation of torture reports. See *2008 Human Rights Report: Jordan, supra*, at 2.

Jordanian law allows any male relative to prevent a woman or child from leaving Jordan, even if they are U.S. citizens. See *Country Specific Information: Jordan, supra*, at 3. Jordanian law applies to dual Jordanian-U.S. citizens, and subjects dual citizens to mandatory military service obligations for males under the age of 37. *Id.* Jordan treats dual citizens as Jordanian citizens and is known not to inform U.S. embassy personnel when a dual Jordanian-U.S. citizen encounters a problem. *Id.*

Notwithstanding Jordan's aggressive pursuit of terrorists, drafting of counter-terrorism legislation, prosecution of terrorism cases, including both al-Qaida and non-al-

Qaida defendants, and investigation and disruption of terrorist plots, the threat of terrorism remains high in Jordan. Terrorists in Jordan often do not distinguish between U.S. government personnel and private citizens and specifically target areas known to be frequented by Westerners. See *Country Specific Information: Jordan, supra*, at 2.

To be sure, Jordanian security forces are of record in disrupting numerous terrorist plots against U.S. interests in recent years, and have continued to prosecute terrorism cases, both al-Qaida related and non-al-Qaida related. See *Country Reports on Terrorism 2008, supra*, at 12. Jordan's state security court convicted and sentenced three individuals, first to death, but then commuted the sentences to 15 years each, for plotting to assassinate President Bush during his November 2006 trip to Jordan. *Id.* For the future, terrorist groups can be expected to continue to conduct intelligence activities as effectively as the Jordanian state's intelligence services. See *Statement for the Record from the Counterintelligence Executive, supra*, at 2.

Israel's country status

Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. See *Administrative Notice: Israel, supra*, at 1-2. Israel has a diversified, technologically advanced economy that is growing at about 5 per cent per year. See *Background Note: Israel, supra*, at 6-9. The U.S. is Israel's largest trading partner. Israel's major industrial sectors include high-technology electronic and biomedical equipment, chemicals, and transport equipment. *Id.* at 8.

Israeli-U.S. country relations remain strong and close: They share common democratic values, religious affinities, and security interests. See *CRS Report for Congress: Israel: Background and Relations with the United States, Congressional Research Service, supra*. The U.S. is committed to Israel's security and well being since 1948 and provides important economic and security assistance to the country. Arab-Israeli peace initiatives have been a major focus of the U.S.-Israeli geopolitical relationship for over five decades. See *Background Note: Israel, supra*, at 11. U.S. efforts to achieve a Middle East peace settlement are based on UN Security Council Resolutions 242 and 338, which "have been based on the premise that as Israel takes calculated risks for peace the United States will help minimize those risks." *Id.*

True, issues remain between the two countries. For instance, the U.S. is concerned with Israeli military sales, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. See *id.*, Summary section and 31 through 34. The U.S. and Israel have regularly discussed Israel's sale of sensitive equipment and technology to various countries, especially China (the PRC). Israel reportedly is the PRC's second major arms supplier, after Russia. *Id.* at 33.

U.S. concerns also extend to Israel's very active data collection activities. The National Counterintelligence Center's 2000 Report to Congress on Foreign Economic Collection and Industrial Espionage lists Israel as one of the most active collectors of

proprietary information. See *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005, supra*. The most recent report identifies the major collectors as repeat offenders who have targeted multiple U.S. government organizations since at least 1997. See *id.* at 2.

Cases have been reported involving Israeli individuals exporting, or attempting to export, U.S. restricted, dual use technology to Israel, including: (1) oscilloscopes that are export-controlled “for nuclear non-proliferation and anti-terrorism reasons,” (see *California Exporter Settles Criminal and Civil Charges for Illegal Exports of High Performance Oscilloscopes to Israel, supra*); (2) epitaxial wafers and oscillator chips that could be used in communications and radar systems (see *Minnesota Company Settles Charges Relating to Illegal Exports to Israel, supra*); (3) an infrared camera, the export of which is controlled “for national security reasons because of its potential application in military surveillance” (see *Israeli Man Settles Charges of Concealing Material Facts, supra*); and (4) diode lasers that have “potential military applications, and are controlled for national security and nuclear non-proliferation reasons” (see *Arizona Company Settles Charges of Illegal Exports of Lasers, supra*). Foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology. See *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005, supra*, at 5-6.

Work-related omissions

In his first application for an engineering position with a state transportation agency in 2001, Applicant inflated his training and experience in computer technology to obtain his engineering position. When asked about his work-related inflation of his work training and experience by the Army interviewer in January 2007, Applicant informed the interviewer that he was familiar with Microsoft excel, when in fact he was not. See Ex. 4. His claimed confusion about the words he used to describe his computer training and experience were not convincing to his supervisor who threatened to terminate him and permitted him to resign his position under unfavorable circumstances. Applicant declined to acknowledge the circumstances of his resignation from the state transportation agency when asked about his employment record in the July 2006 e-QIP he completed in July 2006. See Ex. 1; Tr. 203-04. And he provided false and inconsistent answers about his forced resignation when initially interviewed by the Army investigator in January 2007. See Ex. 4; Tr. 195-97.

Only when pressed by the Army investigator did he admit to “lying” twice on his job applications for employment with the state agency. Ex. 4. When interviewed by an OPM investigator several months later, he returned to his initial practice of defending the general accuracy of the training and experience he claimed in his job application with the state agency.

When Applicant reapplied for an engineering position with the same state transportation agency in April 2006, he failed to inform the agency who hired him that he

had resigned his position with the agency four years earlier to avoid facing possible termination. See Exs. 2 and 4. Applicant's notifying his supervisor of his omission several weeks later did not excuse the omission and ultimately resulted in his supervisor's relieving him of his probation duties. His ensuing settlement only partially restored his expected benefits with the state agency. See Ex. B; Tr. 205-17.

Endorsements

Applicant did not provide any endorsements from friends and associates, or fitness evaluations to counter the trust lapses exhibited in his various employment accounts. Nor did he provide any proof of community and civic contributions.

Policies

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following 2(a) factors: (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 chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Influence

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 the this Guideline can and should considered 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 See AG ¶ 6.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG, ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually

mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a linguist for a defense contractor with work-related personal conduct issues, as well as foreign influence issues associated with his having family members who reside in Israel and Jordan. Although his contacts with most of his family members residing in both countries are not frequent, they do involve his spouse and his siblings, as well as immediate members of his wife’s family. Both countries have strong democratic foundations and enjoy good political and economic relations with the U.S.

Personal conduct concerns

Judgment and trustworthiness concerns exist over Applicant’s demonstrated pattern of judgment, trust and candor lapses associated with his misrepresentations about his training and experience in employment applications he completed for a state transportation agency. Concerns are also raised about the circumstances of Applicant’s being re-assigned by his employer in Qatar, the misstatements and inconsistencies imputed to him in his various accounts covering his experiences with his passports, and the lack of candor he exhibited in his 2007 Army interview and ensuing denial of consideration for a position of trust as an Army translator. These actions reflect serious trust breaches, candor lapses, and disregard of the DoD’s rules and policies for clearance holders.

Applicant’s actions are expressly covered by Guideline E, and are entitled to cognizance under this Guideline according to the Appeal Board. See ISCR Case No. 06-20964, at 6 (App. Bd. April 10, 2008). Where (as here) there is probative adverse information covered by Guideline E which reflects a recurring pattern of questionable judgment use, trust breaches, or candor lapses, grounds exist for considering the allegations covered by Guideline E.

Under Guideline E, two disqualifying conditions are specifically applicable to Applicant’s situation, given the number of judgment and trust lapses he displayed in

his job applications with the state agency and in his reported divulgence of sensitive information to his US Embassy employer while operating in Qatar. Both D.C. ¶ 16(d), “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information,” and DC ¶ 16(f), “violation of a written or recorded commitment made by the individual to the employer as a condition of employment,” have some application to the facts of the case.

Some of Applicant’s explanations for his passport losses and cancellations reconcilable with one another, but not all of them. Both from a piecemeal and overall perspective, this is a very difficult case to unravel. Questions persist about his handling of his passport issues that arose over a five-year period between 2003 and 2007. In the same vein, questions continue to plague Applicant over the circumstances of his re-assignment from his Qatar translator position in 2005, and his inflating of his work-skills and experience in his applications for an engineering position with a state transportation agency in 2001, and again in 2005. While Applicant’s settlement of his claims against the state transportation agency that issued him a rejection notice for his second tour of duty in 2006 partially absolves him of the adverse implications of his rejection, his settlement by itself does not absolve him of the adverse trust implications from his employment omissions of his prior employment with the agency. And his 2006 settlement does not address his 2002 separation for inflating his resume with training and experience he did not possess at the time of his hire.

Based on the passport explanations that Applicant was able to establish with his evidence (i.e., his passport cancellations and new issuances and his settlement of his 2005-2006 employment tour), Applicant is entitled to take some advantage of MC ¶ 17(d), “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur,” and MC ¶ 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” of the mitigating conditions in the personal conduct guideline.

For the most part, Applicant’s actions leave too many unresolved questions about his ability to provide consistent, truthful explanations when asked by public officials in prospective trust relationships or retain sensitive information when employed as a linguist for a government contractor (the Qatar situation). To be sure, Applicant was open about his various employment relationships when interviewed by Army and OPM investigators. But the employment relationships he either assumed or applied for (as with the Army) are replete with inconsistent and false information. Both his OPM and Army interview summaries reflect numerous inconsistencies and

mis-characterizations of the status of his U.S. passport, as well as misstatements about his work training and experience in the two job applications he filed with the state transportation agency he briefly worked for on two occasions. The circumstances of his forced resignation from his linguist assignment in Qatar leave many questions unresolved as well. Besides an argument he had with supervisor, he suggested his forced resignation might have been due to his fiancée's telling his employer that he divulged sensitive information to her. Divulgence of sensitive information, if true, could certainly have raised major questions about his fitness to hold a security clearance and a sensitive translator position. Applicant denied any divulgence of sensitive information when confronted at the hearing., but he acknowledged the possibility of his fiancée's reporting him, when he spoke to Army investigators. Documentation of the reasons for his re-assignment would be helpful to resolving the issue, but is lacking. So, questions persist about whether divulged sensitive information to his fiancée, and what that information might be.

When evaluated collectively, and not in a piecemeal fashion, Applicant's multiple inconsistencies and misstatements leave too many open questions about his integrity and honesty to meet the high standards of trust and reliability imposed on persons who are granted access to see classified information.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to provide consistently complete and accurate answers to investigators seeking background information on his job and clearance suitability do raise security-significant concerns about the sufficiency of the applicant's demonstrated trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his repeated failure to provide full and truthful answers about his passport status and employment relationships. Cultural and language differences, while perhaps contributory to his judgment and trust lapses, do not account for the manifest gaps and inconsistencies in his documented accounts to investigators seeking background information from him. Too many of his accounts reflect either false accounts or irreconcilable ones furnished to various agencies over an extended period (viz. between 2001 and 2007). Either way, Applicant's accounts do not contain full and accurate summaries of information provided investigators, employers, and postal personnel asked to replace a "stolen" passport. While unemployment might have played a considerable role in Applicant's disposition for avoiding information that would jeopardize his employment prospects, it is not enough to mitigate security concerns.

Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of his overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his trust and candor lapses associated with his past employment affiliations and passport experiences.

Taking into account Applicant's interview history of providing inconsistent and inaccurate background information to both government investigators and federal/state employers, his checkered employment history to date that entails either rejections or re-assignments, and his passport accounts that are not fully reconcilable, it is still too soon to make safe predictive judgments about Applicant's overall trustworthiness and reliability. More time is needed to make judgment and trust assessments of Applicant that are commensurate with the minimum requirements for holding a security clearance.

Foreign influence concerns

The Government raises security concerns over risks associated with Applicant's wife, siblings, his wife's family, and a listed friend who are citizens of Jordan residing in Jordan, Israel, and Qatar, respectively. Key to the Government's foreign influence concerns are Applicant's immediate family and wife's family members who currently reside in Jordan and Israel.

Despite strong country relations and reciprocal efforts in prosecuting the war on terror, the threat of terrorism remains high in Jordan. Terrorists are known to target both U.S. government personnel and private citizens in areas known to be frequented by Westerners. Jordan, a country that is controlled by a constitutional monarchy, still has a poor human rights record. It remains a country in transition and in the process of establishing stable political and economic institutions. The historically close relationship between Applicant and his immediate and extended family members (who reside in Israel and Jordan) makes them potentially vulnerable to coercion and non-coercive measures. Similar concerns about terrorists involve Applicant and his family members who reside in Israel.

Because insurgents operating in Jordan and Israel are known to violate domestic laws and regulations, as well as international laws, they are more likely to use improper and illegal means to obtain classified information in Applicant's possession or control through his family members still residing in these two countries. DC ¶ 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.

To date, none of Applicant's siblings, wife, or in-laws or parents or siblings residing in Jordan and Israel, respectively, have any history of being subjected to any coercion or influence. These historical antecedents do limit the severity of any potential conflict situation. However, the absence of any past coercive measures taken by Jordan and Israel authorities does not completely absolve Applicant from coercive risks in the future given Jordan's geographical location and presence of terrorists operating within its borders, and Israel's active data collection program and numerous case prosecutions of individuals involved in export violations. For these reasons, ¶ DC 7(b), "connection 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," has some application to Applicant's situation.

Still, none of Applicant's immediate and extended family members have any identified prior affiliations or connections with any foreign governments (Jordan and Israel included). None have any known affiliations with either the Jordanian or Israeli governments, or any other foreign government (to include Qatar). Any potential conflict that might be associated with his sisters, his wife, and his wife's family is small and not likely to pose any conflicts of interest for Applicant in the foreseeable future.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Jordan and Israel. Unlike the old AGs, the new ones do take into account of the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Applicant's situation is a special one for reasons that pertain wholly to his unique status and circumstances. Not only has he been careful to avoid any frequent contact with his sisters and his wife's family members in Jordan and Israel, but none of his family members have any known history of being pressured or coerced to elicit classified information in Applicant's possession. In special circumstances involving linguists who put themselves in harm's way by working in unstable countries where they have family members residing, the Appeal Board has been quick to note that such individuals are more likely to recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at coercion or exploitation. By their training and work descriptions, they are expected to have experience working in dangerous places. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). Applicant's lengthy historical connections to the U.S. since his naturalization as a U.S. citizen in 1993 and his wife's established work relationship with the U.S. Government in Israel make it unlikely he would ever resolve any potential conflict against his U.S. interests.

Based on his case-specific circumstances, MC ¶ 8(a), “the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S.,” is available to Applicant. Neither Applicant nor his immediate or extended family residing in Israel and Jordan pose any specific heightened security risks that could subject them to potential pressures and influence from either Israeli or Jordanian government and military officials. Of benefit to Applicant, too, is MC ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation,” has some applicability, too, based on Applicant’s infrequent contacts with his siblings and his wife’s family members residing in Israel and Jordan.

One other mitigating condition has application to Applicant’s situation. MC ¶ 8(f), “the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.” is fully applicable. His financial interests in Israel and Jordan are minimal (and for the most part through his wife who resides in Israel), and are not likely to create any problem conflicts in the foreseeable future.

To complete a whole-person assessment of Applicant’s foreign influence risks to ascertain whether they are fully compatible with minimum security clearance eligibility requirements, Applicant’s civilian contributions to U.S. security interests as an Arab linguist require careful balancing with the raised security concerns. On the one hand, he has exhibited trust and candor lapses in his work-relationships, and has no compiled record of endorsements and positive performance evaluations to assess his overall trust and reliability. There is some evidence, too, of his possibly divulging sensitive information to his third spouse that affected his employment status in Qatar in 2005. What kind of information Applicant might have divulged is undeveloped in the record and is not enough to create any reasonable doubts about his ability to resist any mounted pressure or compromise attempts against any of his relatives residing in Jordan or Israel.

Overall, though, there is nothing probative in any of the backgrounds of Applicant and his family members residing in Israel and Jordan to suggest that any of them are at serious risk to compromise classified information when confronted with a pressure situation. Most of them reside with W4 in Israel, where W4 is employed by the U.S. AID, and Applicant has very little contact with any relatives outside of his wife and his sisters.

Whole-person assessment is available herein to minimize Applicant’s exposure to conflicts of interests with his Israeli and Jordanian family members. Most

importantly, Applicant is not aware of any risks of coercion, pressure, or influence that any of his family members might be exposed to. So, in Applicant's case, the potential risk of coercion, pressure, or influence being brought to bear on him, or any of his respective family members (whether or not they reside in the U.S., Israel, or Jordan) is minimal and mitigated.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a).

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparas 1.a through 1.d :	Against Applicant
GUIDELINE B (FOREIGN INFLUENCE):	FOR APPLICANT
Subparas 2.a through 2c:	For Applicant
Subpara. 2.d withdrawn:	For Applicant
Subparas 2.e through 2.j:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

Roger C. Wesley
Administrative Judge

