



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-06247
)	
Applicant for Security Clearance)	

Appearances

For Government:
Braden M. Murphy, Esquire, Department Counsel
For Applicant: John F. Mardula, Esquire

May 29, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 31 December 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C and B.¹ Applicant answered the SOR 10 February 2009, and requested a hearing. DOHA assigned the case to me 2 April 2009, and I convened a hearing 14 May 2009. DOHA received the transcript (Tr.) 22 May 2009.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 39-year-old senior computer engineer employed by a defense contractor since February 2007. He has not previously held a clearance.

Applicant was born in Libya in April 1970. His father was a bank manager for a Middle Eastern bank, working in Libya on a work visa; his mother was a homemaker. Both parents were born in the West Bank, territory now occupied by Israel, but at the time it was part of the semiautonomous Emirate of Transjordan under the British (father) or the Hashemite Kingdom of Transjordan after 1946 (mother). In any event, both parents were Jordanian citizens, and Applicant obtained Jordanian citizenship by descent through his father. When he was six months old, Applicant returned to Jordan with his parents and was raised and educated there until 1984 (age 14), when he moved with his parents to the United Arab Emirates (U.A.E.), where his father had been posted with the bank. In 1988 (age 18), he came to the U.S. to attend college. He has resided permanently in the U.S. since then. His parents immigrated to the U.S. in 1996, after his father retired from the bank. They have resided permanently in the U.S. since then.

Applicant attended college in the U.S., and received his undergraduate degree in engineering in 1994. In January 1995, he married a naturalized U.S. citizen who immigrated to the U.S. with her parents when she was six months old and became a U.S. citizen (as a minor child) when her parents were naturalized in December 1988. They have three children, all native-born U.S. citizens, who acquired Jordanian citizenship by descent through their father under the same law that conferred Jordanian citizenship on him. Applicant became a naturalized U.S. citizen in August 2000, and obtained his U.S. passport in May 2001. Shortly after he became a U.S. citizen, he inquired about renouncing his Jordanian citizenship, but was told—incorrectly—that there was no procedure for renunciation.² He obtained his graduate degree in engineering management in August 2004. He and his wife have owned their own home since March 1997, and also own a rental property in the U.S. His other financial interests are all in the U.S.; he has no property or financial interests in Jordan.

Applicant's wife, three children, parents, parents-in-law, and two siblings are dual citizens of the U.S. and Jordan. They all reside in the U.S. They all own homes in the U.S. His in-laws have lived in the U.S. since 1976. Applicant's brother runs a thrift store. His sister is a housewife, married to a U.S. citizen who holds a clearance. None of his family members has any connection to the Jordanian government. Applicant's third sibling—a sister—is a resident citizen of Jordan. She is a housewife. Her husband owns a small agricultural company. Neither has any connection to the Jordanian government. Applicant talks to his sister monthly.

²Under Jordanian law, a citizen may neither lose Jordanian citizenship nor acquire another nationality without the consent of the Board of Ministers. The law provides for voluntary renunciation, requiring an application, fee, and ultimate approval of the Board of Ministers.

Until he became a U.S. citizen, Applicant maintained the Jordanian passport required under U.S. immigration law. That passport expired in June 2001. In 2005, Applicant was offered—and accepted—a two-year contract to work for his father's old bank in Jordan. His prospective supervisor recommended that he reapply for a Jordanian passport, both to facilitate his business travel from Jordan to neighboring countries and to facilitate his family's transition into Jordanian culture, including his children's admission to Jordanian schools. Aware of no reason not to, Applicant obtained his Jordanian passport in April 2006, and used it once to travel to Syria on business. His wife also obtained a Jordanian passport (which also covered the three children), and they all moved to Jordan in April 2006.

Applicant's sojourn in Jordan was short lived. His wife and children were unable to adjust to the culture and disliked living in Jordan. They were homesick for their family and friends in the U.S. Consequently, Applicant sought—and received—release from his contractual obligation, and he and his family returned to the U.S. in November 2006. When Applicant learned of the problem with having a Jordanian passport while holding a clearance, he surrendered his and his wife's passports to the facility security officer (FSO) and they were destroyed in May 2008 and January 2009, respectively (Answer, Attachments 2, 3).

Applicant fully disclosed his foreign connections on his April 2007 clearance application (G.E. 1) and fully discussed them during an October 2007 subject interview (G.E. 2). During his interview, he stated his willingness to surrender his Jordanian passport and renounce his Jordanian citizenship.

Aside from applying for and using a Jordanian passport, Applicant has not exercised his dual citizenship with Jordan since becoming a U.S. citizen. He has no contacts with Jordan other than his sister.

Applicant's character witnesses (his supervisor and two other work associates who all have clearances) praise his honesty and integrity, and his handling of sensitive company information. All are aware of the foreign influence and preference issues and recommend him for his clearance.

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. Jordan has followed a pro-western foreign policy and has had close relations with the U.S. for more than four decades. The Jordanian government respects human rights in some areas, but its overall record continues to reflect some problems. Problems include: torture, arbitrary arrest, prolonged detention, denial of due process, infringement on citizen's privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement. Under Jordanian law any male relative may prevent a woman or child from leaving Jordan by placing a hold on their travel with the Jordanian authorities, even if they are U.S. citizens. Jordanian law applies to dual U.S.-Jordanian citizens. The Jordanian government publicly condemned terrorist acts throughout the world, practiced strict security measures, passed new anti-terror legislation, and disrupted several terrorist plots. Despite Jordan's aggressive

pursuit of terrorists, the threat of terrorism remains high in Jordan. Al-Qaida has focused terrorist activities against Jordan and U.S. interests in Jordan. Terrorist organizations have targeted the U.S. for intelligence through human espionage and by other means. International terrorist groups have conducted intelligence operations as effectively as state intelligence services.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.³

Analysis

The government established a case for disqualification under Guideline C by showing that Applicant obtained and used a Jordanian passport after becoming a naturalized U.S. citizen.⁴ However Applicant mitigated the Guideline C security

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴Revised Adjudicative Guidelines, ¶ 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. This included but is not limited to: (1) possession of a current foreign passport; (b) action to acquire or obtain recognition of a foreign

concerns. Record evidence demonstrates that his exercise of Jordanian citizenship was innocuous, sensible, and unwitting. That alone would not excuse the exercise of Jordanian citizenship. His dual citizenship was based on his actively renewing or affirming his Jordanian citizenship.⁵ All exercise of dual citizenship occurred while he was an adult.⁶ Applicant's use of his Jordanian passport was not sanctioned by the U.S.⁷ However, Applicant has met the two most salient mitigating conditions. He has expressed a willingness to renounce his foreign citizenship.⁸ He stated—and acted upon—a willingness to invalidate his passport.⁹ Applicant has resided in the U.S. over 20 years. Aside from the one business trip to Syria, all his foreign travel after becoming a U.S. citizen has been accomplished on his U.S. passport. His interests and his roots are well established here. I resolve Guideline C for Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.¹⁰ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.¹¹

citizenship by an American citizen;

⁵Revised Adjudicative Guidelines, ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

⁷¶ 11(d) use of a foreign passport is approved by the cognizant security authority;

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

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

¹⁰Revised Adjudicative Guidelines, ¶ 6.

¹¹Revised Adjudicative Guidelines, ¶ 7 (a).

In this case, the argument for disqualification under Guideline B is not persuasive. Considering first the foreign country involved, Jordan and the U.S. enjoy excellent foreign relations. Jordan has been an active participant in anti-terrorism efforts. Indeed, its on-going human rights issues appear largely related to its anti-terrorism pursuits. However, Jordan is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. Further, in this case it is not clear what further claim Jordan might have on Applicant. The risk that Jordan might seek protected information from Applicant is low, if not non-existent. The main risk in this case is the information gathering activities of the terrorist organizations themselves. But the record evidence reflects that these organizations operate in, and target, areas frequented by westerners.

Considering Applicant's situation in relation to the Jordanian government or terrorist organizations, the government produced no evidence that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts in Jordan. Applicant's sister is a housewife; her husband owns a small agricultural company. Their visibility to either the Jordanian government or terrorist organizations seems low. Applicant's contacts with his sister are infrequent. Neither she nor her husband are connected to the Jordanian government or otherwise situated to be exploited for information gathering. There is nothing in the circumstances of their being in Jordan, or in Applicant's contacts with them, to heighten the risk that he could be impelled to provide protected information to Jordan. I resolve Guideline B for Applicant.

A whole person analysis of the facts in this case requires no different result. Strictly speaking, this case involves no misconduct subject to the kind of analysis contemplated by RAG ¶ 2 (a), but revolves around Applicant's status in relation to his family members in Jordan. The salient consideration under the whole person analysis is the potential for pressure, coercion, exploitation, or duress. As indicated above, the potential for such influence in Applicant's case is low.

Formal Findings

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph a-b: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph a-e: For Applicant

Conclusion

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

JOHN GRATTAN METZ, JR
Administrative Judge