



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 08-11467
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Joseph Testan, Esq.

April 13, 2011

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline B (foreign influence). Clearance is granted.

Statement of the Case

On March 1, 2004, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On April 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (foreign influence) for Applicant. On August 11, 2010, DOHA issued Applicant an Amendment to the Statement of Reasons adding additional allegations under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs after September 1, 2006.

¹ Applicant had previously submitted a Security Clearance Application (SF-86) on October 6, 2003. (GE 1.)

Applicant answered the SOR on May 25, 2010 and answered the Amendment to the SOR on August 20, 2010. Department Counsel was prepared to proceed on August 31, 2010. The case was assigned to me on September 1, 2010. DOHA issued a notice of hearing on September 20, 2010, scheduling the hearing for October 5, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through I, which were received without objection, and he testified on his own behalf. DOHA received the hearing transcript (Tr.) on October 25, 2010.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Jordan contained in Ex. I(1-6). Without objection from the Applicant, I took administrative notice of the documents offered by Department Counsel, which pertain to Jordan. (Tr. 13-14.)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Jordan were derived from Ex. I(1-6) as indicated under subheading "Jordan" of this decision, *infra*.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1a – 1f, and admitted the allegations in SOR ¶¶ 1g – 1i. His admissions are incorporated as findings of fact.

Background Information

Applicant is a 37-year-old Arabic linguist, who is employed by a defense contractor and is currently deployed to Guantanamo Bay, Cuba. Before deploying to Guantanamo Bay, he successfully completed his counterintelligence (CI) screening in September 2010. He seeks a secret security clearance, which is a condition of his continued employment. (GE 1, AE G, Tr. 44, 53, 59, 76.)

Applicant's parents, his two brothers, and three sisters are originally from Jordan. His father was a career noncommissioned officer in the Jordanian Army and

his mother was a homemaker. After Applicant's father retired from the Jordanian Army in 1977, he worked in the private sector. From about 1985, Applicant's parents made periodic trips to visit Jordanian family members living in the United States. These visits continued until Applicant's father passed away in September 2000. (GE 3.)

Applicant immigrated to the United States in March 1990 when he was 16 years old. His older brother had preceded him in 1987 and was already living in the United States. (GE 3, Tr. 33.) Two reasons prompted Applicant's family to immigrate to the United States – (1) as Christians, they were a minority in a predominantly Muslim country; and (2) the rise of extremism in the Middle East. (Tr. 33-34.) After arriving in the United States, Applicant attended high school and graduated in 1992. He attended community college from 1992 to 1995 and was awarded an Associate in Science degree in Automotive Technology. (Tr. -34-35.) After high school, Applicant held part-time and full-time jobs in the restaurant or automotive industry. (GE 1, GE 2.)

In April 1997, Applicant enlisted in the U.S. Navy. He served in the Navy from April 1997 to January 2001, and was honorably discharged as an Aviation Structural Mechanic Safety Equipment Second Class (pay grade E-5). (AE H, Tr. 26-27, 35-36, 74.) Applicant was in the active Navy reserve from 2002 until 2003, and was in the inactive naval reserve from 2003 to 2005. (Tr. 36, 38-39.) Applicant successfully held a secret security clearance during his Navy service. (Tr. 60.)

While on active duty, Applicant became a naturalized U.S. citizen in October 1998, and was issued a U.S. passport in November 1998. (GE 1 – GE 3.) While on active duty, he continued to earn college credit part-time. After his release from active duty, he attended college from September 2001 to December 2002, and was awarded a Bachelor of Arts degree in History. (GE 1, GE 2, Tr. 37.) He has since completed all of his course work for a Master's Degree in History with a concentration in Islamic Studies. (Tr. 43, 73-74.)

Applicant married in June 2002. His wife and her family, like Applicant, were from Jordan. They divorced in September 2008. Since his divorce, Applicant has not had any contact with his former spouse or her family residing in Jordan. No children were born during this marriage and Applicant has no dependents. Two SOR allegations dealt with Applicant's connections with his former spouse and his mother-in-law. (SOR ¶¶ 1c and 1d.) In light of Applicant's divorce and non-contact with his former spouse and her family, these concerns are no longer applicable. (GE 1, GE 2, Tr. 31-32, 63.)

Since Applicant's release from active duty, he has held several jobs to include two terms of employment as an Arabic linguist for defense contractors. From February 2003 to January 2004, he was employed by a defense contractor to work as an Arabic linguist during the Iraq invasion. He accompanied a U.S. Army unit in Iraq and was forward deployed and in harm's way "many times." (GE 2, Tr. 37-40, 70-72.) From March 2004 to August 2005, he was employed by a defense contractor to work as Arabic linguist at Guantanamo Bay. His company promoted him to senior linguist and

project manager. His new duties required him to travel to Iraq, Kuwait, United Arab Emirates, and Qatar. He remained with this company until June 2006 and resigned to open a restaurant and attend school. It was at this time he completed his course work for his Master's Degree, discussed *supra*. (Tr. 41-43.) In Iraq, Applicant held a secret security clearance, and in Guantanamo Bay, he held a top secret clearance. (Tr. 61.)

Applicant's mother is 62 years old, and she became a naturalized U.S. citizen in April 2002. Contrary to what the SOR alleges, she does not live in Jordan, but lives in the United States with Applicant's older brother, discussed *infra*. (SOR ¶ 1a.) (GE 2, Tr. 45.)

Applicant has a sister (S-1), who is a citizen and resident of Jordan. She retired as a major after serving 15 years in the Jordanian Army. (SOR ¶ 1f.) S-1 applied for permanent resident status in the United States in 2003. In July 2010, she came to the United States for 40 days to establish U.S. residency. During this 40-day period, S-1 was issued her (1) "green card," (2) social security card, and (3) driver's license. She also applied to sit for the state nursing examination and opened a bank account with a \$2,500 deposit. She returned to Jordan to close up her affairs and is now living in the United States. Other than receiving a modest pension for her Jordanian Army service, she is not affiliated with the Jordanian government. (AE D, Tr. 45-46, 64-65.)

Applicant has a sister (S-2), who is a dual citizen of the United States and Jordan and resides in Jordan. (SOR ¶ 1g.) S-2 has been employed by a U.S.-based company since October 2006 and is currently serving as deputy chief of party for a U.S. Aid funded project in Jordan. S-2 is attempting to secure a company transfer to the United States. She is not affiliated with or connected to the Jordanian government. Applicant has contact with S-2 "[p]robably three times a year, just Easter, Christmas, and her birthday, I call her or, send her an e-mail." (AE C, Tr. 47-49, 65-66.)

Applicant has a sister (S-3), who is a citizen and resident of Jordan. S-3 is employed a high school teacher. (SOR ¶ 1b.) S-3 is married and her husband (S-3H) is also a citizen and resident of Jordan. S-3H is neurosurgeon. S-3, like the rest of her siblings, plans to move to the United States. She completed her application to move to the United States in 2004 and is awaiting further instructions. Apart from S-3 deriving her salary from the state, neither S-3 nor S-3H are affiliated with nor do they have any connection with the Jordanian government. Applicant has contact with S-3 "probably two, three times a year, max." (GE 3, Tr. 49-51, 66-67.)

Applicant has two brothers (B-1 and B-2), who are naturalized U.S. citizens and residents of the United States. B-1 is married to a U.S. citizen and has three U.S. – born children. Applicant's mother lives with B-1. B-2 is unmarried and has no children. (Tr. 51-52.) B-1 supports Applicant's mother. (Tr. 63.)

The SOR alleges that Applicant traveled to Jordan for five family-related visits in 1998, 1999, 2000, and 2008. (SOR ¶ 1i.) In 1998, Applicant's father requested that Applicant visit him in Jordan for the purpose of their being baptized. Applicant's family

pastor in the United States certified that Applicant and his father were baptized on August 28, 1998 in Amman, Jordan. (AE E, Tr. 54.) In December 1999, Applicant's father was diagnosed with a brain tumor. Applicant was on active duty at the time and took emergency leave to accompany his father from Jordan to Tel Aviv, Israel for medical treatment. (Tr. 55.) In June 2000, his father's condition deteriorated and in June 2000, Applicant returned to Tel Aviv to accompany his father home to Jordan because his father's condition was "hopeless." (Tr. 56.)

In May 2001, Applicant returned to Jordan to meet with a woman and her family he had met on a previous trip. They become engaged, married and subsequently divorced, discussed *supra*. (Tr. 56-57.) In 2008, Applicant and an older brother went to Jordan to accompany their sister (S-1) to Tel Aviv for medical treatment. She had been diagnosed with breast cancer and later with leukemia. Applicant and his brother accompanied her to Tel Aviv for moral support. (Tr. 57.) Not alleged is a trip that Applicant and his older brother made to Jordan in June 2010. They again accompanied their sister (S-1) to Tel Aviv for a medical checkup and provide her with moral support. (Tr. 67-68.)

Applicant testified that if he was approached by someone seeking classified or sensitive information, he would report that overture to the authorities. The United States is his home. He has no assets in Jordan as opposed to having all of his assets in the United States. He owns a home and restaurant business in the United States. All of his bank accounts are in the United States. (AE I, Tr. 52-54, 69-70.) Applicant does not have any contact with any relatives in Jordan other than the ones mentioned, *supra*. (Tr. 68.) Applicant is current on all of his state and federal income taxes, exercises his right to vote, and enjoys all rights and privileges of being a U.S. citizen. (Tr. 75.)

Character Evidence

Applicant was awarded an Honor Certificate for attaining the highest scholastic average in his Navy Class "A" School, Aviation Structural Mechanic Safety Equipment Common Core Class A1 in October 1977. (AE A, AE B.) He also submitted an October 1998 Navy Letter of Commendation, a copy of his Navy Good Conduct Award, and a 2000 Navy enlisted performance evaluation reflecting above average performance. (AE F.)

Applicant submitted six personal reference letters to include long-time friends, a pastor, a neighbor, and a college professor. (AE E.) Applicant also submitted six work-related reference letters to include former colleagues that worked with him in Iraq and at Guantanamo Bay and a former Navy supervisor. (AE F.) These individuals collectively express their full support for Applicant and describe him as a person of integrity, honesty, and compassion. He was awarded two Certificates of Appreciation for his superb performance as an Arabic linguist at Guantanamo Bay. (AE H.)

Jordan²

Jordan is a small country located in the Middle East with a constitutional monarchy and a developing economy. Jordan is ruled by King Abdullah II, has a Council of Ministers selected by the King, and has a partially elected bicameral National Assembly. Jordan has followed a pro-Western foreign policy and has had close relations with the United States for six decades.

The State Department notes that Jordan's human rights record continues to reflect some problems. Problems include: torture, arbitrary arrest, prolonged detention, poor prison conditions, denial of due process, infringement on citizens' privacy rights, and restrictions on freedom of speech, press, assembly, and association. The United Nations reports that torture by police and security forces is widespread based on consistent and credible allegations.

Jordanian law allows any adult male relative to prevent a woman or child from leaving Jordan, even if the woman or child only holds U.S. citizenship. Jordanian law applies to dual Jordanian-American citizens. Jordanian law subjects dual citizens to certain obligations, for example, males under the age of 37 are required to register for service in the Jordanian military. Overall, Jordan treats dual citizens as Jordanian citizens under law and may not inform the U.S. embassy if a dual Jordanian-American citizen has a problem in Jordan.

Despite 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 frequented by Westerners.

In recent years, the Jordanian security forces disrupted numerous terrorist plots against U.S. interests. Transnational terrorist groups and local terrorist groups pose threats in Jordan. Specifically, Al-Qaida continues to focus terrorist activities against both the U.S. and Jordan. Al-Qaida claims responsibility for the November 2005 bombings of three hotels in Amman, a rocket attack in August 2005, and the assassination of an American diplomat in 2002. 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.

Terrorist organizations currently target the United States for intelligence collection through human espionage and by other means. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

² This section was taken in whole or in part from Ex. I(1-6.) See Ex. I(1, p. 6-7), Tr. 14.)

Relations between the United States and Jordan have been close for six decades, with 2009 marking the 60th anniversary of U.S.–Jordanian ties. A primary objective of U.S. policy has been the achievement of a comprehensive, just and lasting peace in the Middle East. U.S. policy seeks to reinforce Jordan’s commitment to peace, stability, and moderation. The peace process and Jordan’s opposition to terrorism parallel and indirectly assist wider U.S. interests. Accordingly, through economic and military assistance and through close political cooperation, the United States has helped Jordan maintain its stability and prosperity.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline B (foreign influence).

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 lists two conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has periodic contacts with S-2 and S-3, who are citizens and residents of Jordan. These close relationships with his relatives create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The Government produced substantial evidence of these two disqualifying conditions as a result of Applicant's immediate family members living in Jordan, his contact with them, and his travel to Jordan. The burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Two Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(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

(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.

AG ¶ 8(a) partially applies. S-1 was recently granted permanent resident alien status and now lives in the United States. S-2 is a dual U.S.–Jordanian citizen and works for a U.S.–based company in Jordan. S-2 is seeking a company transfer to the United States. S-3 has a pending application to move to the United States. With the exception of S-1, who receives a modest military pension from Jordan, and S-3, whose teacher salary is derived from Jordan, Applicant's family members are not associated with or connected with the Jordanian government. On the other hand, Applicant has emotional ties with his two siblings living in Jordan as evidenced by his contact with them and visits to Jordan. With regard to his two sisters currently living in

Jordan, Applicant did not establish “it is unlikely [he] will be placed in a position of having to choose between the interests of [his sisters] and the interests of the U.S.” His frequent contacts with his relatives in Jordan could potentially force him to choose between the United States and Jordan. On balance, he did not fully meet his burden of showing there is “little likelihood that [his relationship with sisters] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) fully applies. Applicant is a naturalized U.S. citizen, graduated from high school in the United States, received all of his higher education in the United States, honorably served in the Navy, and served as an Arabic linguist in Iraq and at Guantanamo Bay. He successfully held security clearances in the Navy and during his two terms of employment with two separate defense contractors. He successfully completed CI screening and is currently serving as an Arabic linguist at Guantanamo Bay. Applicant’s mother and two brothers are U.S. citizens and reside in the United States. Most notably, Applicant has been in harm’s way in Iraq having placed his life on the line accompanying forward deployed Army personnel.

Appellant has developed a sufficient relationship and loyalty to the United States, that he can be expected to resolve any conflict of interest in favor of the U.S. interest. All of his assets are in the United States. Applicant has been employed by a defense contractor and is very highly regarded at work. Applicant’s contacts and linkage to the U.S. are greater than his linkage to Jordan. He is heavily vested in the United States -- financially and emotionally.

Whole-Person Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole-person concept under Directive ¶ E2.2.1. “Under the whole-person concept, the administrative judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”³

The directive lists nine adjudicative process factors (APF) which are used for “whole-person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁴ In addition to the

³ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation)).

⁴ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd.

eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall commonsense determination.” Directive ¶ E2.2(c).

The Appeal Board requires the whole-person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. I have carefully considered Applicant’s family connections and personal connections to Jordan. Initial concerns regarding his mother residing in Jordan, his spouse being a registered alien from Jordan, his mother-in-law being a citizen and resident of Jordan, and S-1 being a retired major from the Jordanian Army have been overtaken by events and are no longer applicable. Applicant has two sisters living in Jordan. He has frequent, non-casual contact with his siblings living in Jordan. Applicant traveled to Jordan six times since 1998 for family-related visits.

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant is a naturalized U.S. citizen, who has lived in the United States since he was 16 years old or alternatively stated, he has lived in the United States for the last 21 years except when serving overseas. His mother and two brothers are naturalized U.S. citizens residing in the United States. S-1 was granted her “green card” and now lives in the United States. S-2 is a dual citizen and seeks a company transfer to the United States. S-3 has a pending application to relocate to the United States.

Most compelling, however, is the fact that Applicant honorably served in the Navy, served two terms of employment as an Arabic linguist, first in harm’s way in Iraq and later at Guantanamo Bay, and he is currently serving as an Arabic linguist at Guantanamo Bay. During active duty and his terms of service with defense contractors, he has successfully held security clearances and has repeatedly proven himself.

Applicant is financially vested in the United States as a home owner and owner of a small business with no financial ties to Jordan. The majority of Applicant’s immediate family is in the United States and he maintains a close relationship with them. In short, Applicant’s life is predominantly U.S.-based. His ties to the United States are clearly stronger than his ties to Jordan. There is no evidence that he has ever taken any action which could cause potential harm to the United States.

Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole-person analysis in foreign influence cases).

Applicant's past and present employers have considerable trust in him. His personal and work-related references assess Applicant as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. He has an excellent reputation as a friend, family member, employee, and U.S. citizen. His evidence supports him for a security clearance. There is no derogatory record information about him. Lastly, Jordan has supported the U.S. war against terrorism and is a country that has been and continues to be friendly with the U.S. for more than 50 years.

This case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Jordanian government or its agents might exploit or attempt to exploit Applicant's immediate family members in such a way that this U.S. citizen would have to choose between her pledged loyalty to the United States and those family members. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole-person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors"⁵ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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 B:	FOR APPLICANT
Subparagraphs 1a – 1i:	For Applicant

Decision

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 is granted.

Robert J. Tuider
Administrative Judge

⁵See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

