



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



In the matter of:)
)
) ISCR Case No. 08-11575
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro Se*

November 23, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the government’s security concerns under Guideline C, Foreign Preference, but did not mitigate the security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

On May 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 19, 2009, and requested a hearing before an administrative judge. The government amended the SOR on July 23, 2009. Applicant answered the amended SOR on August 3, 2009. The case was

assigned to me on August 5, 2009. DOHA issued a Notice of Hearing on August 19, 2009. I convened the hearing as scheduled on September 25, 2009. The government offered Exhibits (GE) 1 through 4 and Hearing Exhibits (HE) I through VI for administrative notice. Applicant did not object; the exhibits were admitted; and I took administrative notice as requested. Applicant testified and offered Exhibits (AE) A through H, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 1, 2009.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, 1.g and 1.i. He denied the SOR allegations in ¶¶ 1.a, 1.h and 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 37 years old. He emigrated from Jordan to the U.S. in March 1999. He became a naturalized U.S. citizen in February 2008. He was married in Jordan in June 1999. His wife is a Jordanian citizen. She has permanent residency status in the U.S. and lives in Jordan. He has two children. His nine-year-old daughter and six year old son are dual citizens of Jordan and the U.S. His six-year-old son was born in the U.S. A non-Jordanian citizen is required to pay a daily fee to live in the country. So Applicant applied for dual citizenship for his son, so he would not have to pay the fee. Both of his children have Jordanian passports and live with their mother in Jordan. His wife intends on applying for U.S. citizenship when she is eligible. Applicant worked as a linguist recruiter.¹

Applicant's wife entered the U.S. on a travel visa after they married. Applicant had a green card at the time. His wife was required to return to Jordan after her visa expired. He applied for a spouse visa, which she received. From 2004 to 2005, she lived for approximately one year in the U.S. and six months in Jordan. She last visited the U.S. in July 2009, for two months. Applicant resided in Jordan with his wife from August 2007 to January 2008. He has traveled to Jordan two or three times since January 2008. One trip was for about a month. One trip was for 11 days. He expects his wife will move to the U.S. when his children finish school in June 2010.²

Applicant renewed his Jordanian passport on January 16, 2008. It was to expire on January 15, 2013. He retained his Jordanian passport after he became a U.S. citizen. He used this passport on September 12, 2009, to travel to Lebanon to attend his friend's wedding. He was advised by his friend that if he used his U.S. passport he would be delayed at the Syrian border. He stated "I ha[d] no choice but to use the Jordanian Passport to be safe and for the last time."³ On September 23, 2009, Applicant surrendered his Jordanian passport to his facility security officer and it was

¹ Tr. 20-26, 28-31, 78-81.

² Tr. 63-68, 73-79.

³ AE E.

destroyed. The certification letter stated that Applicant “renounced his Jordanian citizenship by surrendering his Jordanian passport.”⁴ In interrogatories dated February 28, 2009, he stated he was unwilling to renounce his Jordanian citizenship. He has not taken any other affirmative action to renounce his Jordanian citizenship. At his hearing Applicant explained that by destroying his passport, it would require a long procedure to get a new one. He does not intend to renew his Jordanian passport.⁵

Applicant attended college and studied law, which was a four-year program. He then was a legal apprentice for two years and passed the Jordanian bar exam in January 1999. He paid his bar dues a couple of times, but no longer pays them. One must be a Jordanian citizen to practice law in Jordan. Applicant stated he would give up his Jordanian citizenship even if it meant he could not practice law there.⁶

Applicant purchased an apartment in Jordan in 2003 for investment purposes. Applicant’s wife and two children live in the apartment. It is completely paid for and is worth approximately \$45,000. He does not own any other real property in Jordan. He retained his Jordanian passport until recently, so he could give his wife a power of attorney to sell his property. He does not own any real property in the U.S.⁷

Two weeks before his hearing Applicant closed a bank account he maintained in Jordan.⁸ He owned stocks in Jordan and sold them in the past year. He stated he has no other financial interests in Jordan. Applicant did not serve in the Jordanian military.⁹

Applicant’s wife does not work outside of the home. He sends her money through a shared account in the U.S. that she can access. His wife has a medical issue. She lives in Jordan because he can afford to pay a maid to help take care of the house. He explained that he sent his wife to Jordan while the children were small so she could have help. He would not be able to afford domestic help if she lived in the U.S. Applicant’s children attend a bilingual Christian school.¹⁰

Applicant lives with his parents who are dual citizens of Jordan and the U.S. His father was in the Jordanian army for 22 years and then worked in Saudi Arabia. He receives a pension from Jordan. His father owns an old house and parcel of land in

⁴ AE A.

⁵ Tr. 68-73.

⁶ Tr. 59-62.

⁷ Tr. 26-27, 62, 76.

⁸ Tr. 27-28; AE B.

⁹ Tr. 38.

¹⁰ Tr. 31-36.

Jordan that he inherited from his father. Applicant's uncle maintains the property. His parents return to Jordan every two years for a visit.¹¹

Applicant has four brothers. One brother also lives with Applicant's parents. He has a disability. He is a dual citizen of Jordan and the U.S.¹²

Applicant's second brother is a dual citizen of Jordan and the U.S. He resides in the U.S. and manages his parent's store. His wife is a dual citizen of Jordan and the U.S. He has four children who are all dual citizens of Jordan and the U.S.¹³

A third brother lives in Jordan where he owns a business. He is a dual citizen of the U.S. and Jordan. His wife is a dual citizen of Jordan and the U.S. They have five children, four of whom were born in the U.S. and the youngest was born in Jordan. His daughter, who is over 18 years old, was born in the U.S. and attends school here.¹⁴

A fourth brother is a dual citizen of Jordan and the U.S. He resides in the U.S. He had a Jordanian passport, but did not renew it. He does not visit Jordan. His wife is a Jordanian citizen and holds a U.S. green card. She is not yet eligible to apply for U.S. citizenship. He has two children; one was born in Jordan, the other in the U.S. Both are dual citizens. Applicant and his brother served as linguist recruiters, whose job is to find qualified linguists who can support the U.S. Army. The brother has worked as a linguist recruiter for the U.S. Army for two years. He only works in the U.S. and not overseas. Applicant explained that his family has maintained their dual citizenship status so they can travel to Jordan.¹⁵

Applicant's parents-in-law are citizens of Jordan and live in the U.S. Both parents-in-law are sick and do not work. They came to the U.S. in the early 1990s and in 2000 decided to remain. His wife has six siblings. One brother is a retired police officer who receives a pension from the Jordanian government. He is a citizen of Jordan and resides with his family in Oman. Another brother is a citizen of Jordan and resides there with his family. He is a store owner and has a U.S. green card. Two sisters and a brother live in the U.S. and the remaining brother lives in Canada. One brother holds a green card. Applicant was unaware of the citizenship status of the others.¹⁶

¹¹ Tr.55-59.

¹² Tr. 45-46.

¹³ Tr. 43-45.

¹⁴ Tr. 52-55.

¹⁵ Tr. 46-52.

¹⁶ Tr. 36-43, 97.

When he lived in Jordan, Applicant was persecuted because he was not Muslim. He also suffered discrimination while attending law school and he was pressured to convert to Islam.¹⁷

After he became a U.S. citizen, Applicant participated in the U.S. presidential election. He participated in the Jordanian elections in 2005 because a distant cousin was running for a seat in Parliament. She did not win.¹⁸

Applicant has a U.S. bank account. He attended a U.S. university and has earned nine credits towards a master's degree.¹⁹

Applicant provided a character letter from a military supervisor. The supervisor stated he had a lengthy professional relationship with Applicant and believes he possesses the concrete professional attributes and unique personal characteristic that will assist him in his career. He further stated Applicant had an impeccable record. He is technically and tactically proficient in his work. He has numerous accomplishments and performs well in a demanding environment. He believes Applicant expresses a solid commitment toward the nation, the U.S. Army, and his family.²⁰

Jordan²¹

Jordan's government is a constitutional monarchy. It is ruled by a King and has a Council of Ministers selected by the King and has a partially elected bicameral National Assembly. It has followed a pro-western foreign policy and has had close ties with the U.S. for decades.

Jordan's human rights record continues to reflect problems. Issues include torture, arbitrary arrests, prolonged detention, denial of due process, infringement of privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement. Torture by the police and security forces is widespread.

Jordanian law allows any male relative to prevent a woman or child from leaving Jordan, even if they are U.S. citizens. Dual citizens are subject to certain obligations, including mandatory military service for males less than 37 years. Jordan treats dual citizens as Jordanian citizens under the law and it may not inform the U.S. embassy if a dual Jordanian-American citizen experiences problems while in Jordan.

¹⁷ Tr. 62, 95.

¹⁸ Tr. 82-84.

¹⁹ Tr. 88-89.

²⁰ AE D.

²¹ HE I-IV, GE 4.

The threat of terrorism in Jordan is high and westerners are specifically targeted. Al-Qaida focuses terrorist activities against both the U.S. and Jordan. Specifically, Al-Qaida claimed responsibility for the bombings of three hotels in Jordan, a rocket attack targeting a U.S. naval ship, and the assassination of an American diplomat. 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 George W. Bush, during his November 2006 trip to Jordan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern involving foreign preference:

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

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(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 includes but is not limited to: (1) possession of a current foreign passport . . . (5) using foreign citizenship to protect financial or business interests in another country;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant is a dual citizen of Jordan and the U.S. He used his Jordanian passport to travel to Lebanon after becoming a U.S. citizen. He kept his passport so he could provide his wife with a power of attorney in Jordan to sell property. I find the above disqualifying conditions apply.

I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

(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; and

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

Applicant's exercised dual citizenship after he became a U.S. citizen and used his Jordanian passport. He has tangentially expressed a willingness to renounce his dual citizenship, however without some official documentation he could still be subject to Jordanian laws while in that country. Applicant surrendered his Jordanian passport and it was destroyed by his facilities security officer. I find mitigating conditions (a), and (c) do not apply. I find mitigating condition (b) and (e) apply.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

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

(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;

(c) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which

could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's wife is a citizen and resident of Jordan. She lives there with Applicant's two children. Applicant travels to Jordan to visit his family. His parents and siblings are all dual citizens of Jordan and the U.S. One brother resides in Jordan. Many of his wife's family reside in the U.S. or Canada, but remain citizens of Jordan. Some of her relatives remain in Jordan. Applicant owns property in Jordan. His father also owns property there. Applicant's ties to Jordan are significant because his wife and children live there. Applicant shares living quarters with his wife when he is in Jordan, and he provides support for his family.

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. Applicant's wife is a citizen of Jordan and his children are dual citizens. Because he has not formally renounced his Jordanian citizenship, when he travels to Jordan he could be subject to Jordanian laws. His relationship with his wife and his children create a heightened risk of foreign pressure or attempted exploitation. Although Jordan and the U.S. have ties, there are many factions in the country that create a heightened risk. Applicant's connection with his wife and children also creates a conflict of interests because the relationship is sufficiently close to raise a security concern. Applicant has a brother and his family living in Jordan. Therefore, I find disqualifying conditions (a), (b) and (c) apply to Applicant's wife, children, and brother. I do not find the disqualifying conditions apply to his other relatives because they all live in the U.S. Applicant owns property in Jordan. He is attempting to sell it, but at present he maintains a significant financial interest in Jordan and disqualifying condition (e) applies.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

(a) the nature of the relationship 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 and interests of the U.S.;

(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 interests in favor of the U.S. interests;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(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

Applicant travels to Jordan to visit his family. He maintains close ties with them. He maintains a financial interest in Jordan. Applicant has not met his burden of establishing that it is unlikely he will be placed in a position of having to choose between the interests of his wife and children living in Jordan and the interests of the U.S. His contacts with them could potentially force him to choose between the two.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Jordan has maintained ties with the U.S. for decades. However, there are active terrorist organizations within Jordan that target westerners. The government also has a questionable human rights record. Applicant has a very heavy burden of persuasion to demonstrate that his wife and children in Jordan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. Applicant has not met that burden. I find mitigating condition (a) does not apply.

Applicant's immediate family lives in Jordan. His wife is a citizen of Jordan and his children are dual citizens. He applied for dual citizenship for his son so he would not have to pay a tax. When visiting Jordan, Applicant is subject to their laws, because he has not formally renounced his citizenship with the Jordanian government. Although he recently surrendered his Jordanian passport, it does not negate his present and past contacts and actions regarding Jordan. I find under the circumstances there could be a conflict of interest and mitigating condition (b) does not apply.

Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant maintains regular contact with his family in Jordan. He has less contact with his brother. These contacts are not casual and infrequent. I find mitigating condition (c) does not apply.

Applicant closed a bank account he had in Jordan and sold his stocks there. He owns an apartment in Jordan where his wife and children live. He does not own property in the U.S. It appears that the property in Jordan is Applicant's main asset and it could be used to influence, manipulate, or pressure him because it is the domicile for his family. I find mitigating condition (f) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has served the U.S. as a linguist recruiter. He expresses his loyalty to the U.S. Most of his family are dual citizens of the U.S. and Jordan and live in the U.S. He cherishes the freedoms he has been afforded in the U.S. His wife is a permanent resident of the U.S., but lives in Jordan with their two children. He owns the apartment where they live. His close family ties in Jordan create a security concern. I find he has mitigated the foreign preference security concerns, but failed to mitigate the foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interests to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge