



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



In the matter of:)	
)	
)	ISCR Case No. 08-12177
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel

For Applicant: *Pro se*

September 25, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), which he signed on July 16, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as

On April 9, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Revised Adjudicative Guidelines (AG).² Applicant received the SOR on April 16, 2009. He signed his notarized Answer on April 27, 2009, in which he admitted to all the allegations in the Statement of Reasons, except allegation 1.a. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on June 4, 2009, and the case was assigned to me on June 9, 2009. DOHA issued a Notice of Hearing on June 19, 2009, and I convened the hearing as scheduled on July 22, 2009. During the hearing, Department Counsel offered two exhibits, which were marked as Government Exhibits (GE) 1 and 2, and admitted without objection. Applicant testified and offered one exhibit, Applicant Exhibit (AE) A, which also was admitted without objection. I held the record open to allow Applicant to submit additional documentation. Department Counsel forwarded without objection Applicant's timely submission of three additional exhibits, admitted as AE B through D. DOHA received the transcript (Tr.) on July 27, 2009.

Procedural Ruling

Department Counsel requested that I take administrative notice of facts relating to Jordan, set forth in six documents, marked as exhibits GE I through VI. Applicant requested administrative notice of facts included in two documents, marked as AE I and II. Included in Applicant's post-hearing submission were two additional documents for administrative notice, marked as AE III and IV. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR allegations are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 33 years old, was born in Jordan and immigrated to the United States in 1993, at the age of 17. He was not employed in Jordan before he left the country (Tr. 30). He completed high school in the United States, and earned a double bachelor's degree in information systems and operations management at a U.S. university (GE 1). Applicant has worked on federal contracts since 2004. He currently works in the

amended.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

information technology field for a defense contractor. He has held an interim clearance without incident (GE 1; Tr. 31-32).

Applicant held a Jordanian passport from 2002 to November 2007 and did not renew it when it expired.³ He applied for U.S. citizenship in March 2007 and was naturalized in June 2008. He received his U.S. passport in July 2008. He does not believe that he is a dual U.S.-Jordanian citizen because he renounced foreign citizenship when he took the U.S. citizenship oath.⁴ He has not traveled to Jordan since obtaining his U.S. passport. Applicant married in 2001. His wife, a citizen of Jordan, received her U.S. citizenship in April 2009. Their children, aged two and four, were born in the United States (GE 1, 2; Tr. 41, 69-70).

Applicant's parents, four brothers, his brothers' families, and his in-laws are citizens and residents of Jordan. He also has one brother who is a citizen and resident of the United States. Applicant first visited his family in Jordan in 2002, after being in the United States for nine years. He visited his family again in 2006 and 2007. In April 2008, he visited again when his father suffered a heart attack. Applicant has sent money to his family annually from approximately 2001 to the present (GE 1, 2; Tr. 30, 46, 51, 71).

Applicant's mother is 69 years old and his father is 75. He is retired from a position as a driver for a private electric company. Applicant keeps in touch with his parents weekly by telephone. He is in touch with two of his brothers approximately once per year. One of these brothers formerly worked for a medical laboratory, but is currently unemployed. The other brother formerly worked for the Jordanian Housing Authority, but currently works as a security guard in a private garage. Applicant speaks with two other brothers more frequently, once every one to two months. One of these brothers is an entrepreneur who operates a day-care center. The other manages a supermarket. Applicant's family is aware that he is applying for a security clearance. Applicant has applied to the Department of Homeland Security to sponsor his family to become resident aliens in the United States (GE 1, 2; AE B, C, III, IV; Tr. 46-49, 53-55, 67-68, 70-72).

Applicant's wife's parents and siblings are all Jordanian citizens and residents. Her family lived in the United States while one brother earned his master's degree. They moved back to Jordan shortly after Applicant and his wife married in 2001. Her brother returned to Jordan several years later. Her father is the chief financial officer of a private hospital and her mother is a homemaker. Applicant's wife has one brother who is an accountant and one who is a car salesman. Her two sisters are homemakers. None of his in-laws work for the Jordanian government. Applicant's wife speaks with her family about once per month, and Applicant speaks with his in-laws

³ Applicant informed the investigator in his 2008 security interview that he had "submitted his foreign passport for cancellation" in 2007. The report contains no further details about the cancellation (GE 2).

⁴ Jordan considers U.S.-Jordanian dual nationals to be Jordanian citizens. (GE II at p. 3).

about twice per year. Applicant's wife has applied to the Department of Homeland Security to sponsor her family to become resident aliens in the United States (AE B, C, III, IV; Tr. 55-61, 70-71).

In 2006, Applicant purchased approximately ¼ acre of undeveloped land in Jordan as an investment. He made a down payment of \$40,000 on the \$80,000 price. He completed the purchase in 2007, after paying two installments of \$20,000 each. Later, the downturn in the housing market made purchase of a home in the United States more feasible. He put the land up for sale in 2008, hoping it would provide funds for a down payment on a house in the United States. However, due to the recent financial crisis, the property remains unsold (GE 1, 2; AE D; Tr. 61-63).

In April 2008, Applicant opened a checking account in Jordan with a \$299 deposit, expecting to use it to help his parents, if necessary. He provided documentation showing that he closed the account in May 2009. He testified that he authorized the bank to disburse the \$299 in the account to his father (GE 2; AE A; Tr. 63, 66-67).

Administrative Notice

I take administrative notice of the following facts derived from the submitted U.S. government publications. Jordan is a Middle Eastern country with a constitutional monarchy and a developing economy. It has a pro-western foreign policy and has had close relations with the United States for six decades. On the other hand, Jordan has had human rights issues, including prolonged detention, denial of due process, and some restrictions of freedom of speech, press, assembly, and other human rights.

Jordan cooperates with the United States in fighting international terrorism. However, the threat of terrorism carried out by transnational and local terrorist groups remains high. Terrorist groups use covert, overt, and clandestine activities to undermine and exploit U.S. national security interests. The Jordanian government aggressively pursues terrorists. In recent years, terrorist plots against U.S. interests have been interrupted by Jordanian security forces. The parliament has passed anti-money-laundering legislation aimed at individuals and entities that attempt to bankroll terrorist groups. It has also organized a state security court that specializes in cases involving terrorism.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised

Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to applicants to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁷ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of the government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to 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

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

The relevant disqualifying conditions are AG ¶ 7(a), 7(b) and 7(e):

(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;

(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.

Although foreign family ties are not automatically disqualifying, they do raise the potential of foreign influence. Applicant's parents, brothers and in-laws live in Jordan. He has visited Jordan four times since 2002, and he stays with his family during these visits. Applicant's wife also has family in Jordan. She keeps in touch with them, and Applicant sometimes speaks with them as well. Applicant's bank account is closed and no longer presents a security concern; however, his unsold ¼ acre of land represents an ongoing property interest. AG ¶ 7(a), 7(b) and 7(e) apply.

The foreign influence guideline also includes factors that can mitigate disqualifying conditions. Under AG ¶ 8, the following mitigating conditions are relevant:

(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 United States;

(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;

(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;

Although Jordan has serious problems with terrorist activities, it works aggressively to combat terrorism. Applicant's family and in-laws do not have high-profile jobs or connections with the government. Jordan's relationship with the United States goes back decades, and its track record of cooperation makes it unlikely that it would exploit Applicant for information through his family. Mitigating condition AG ¶ 8(a) applies.

AG ¶ 8(c) does not apply in mitigation. Applicant maintains a relationship with his family in Jordan. His weekly contacts with his parents, monthly contacts with two of his brothers, his visits, and his monetary gifts all demonstrate his ties of affection and obligation to his family, which creates a potential risk of foreign influence.

However, Applicant's ties to the United States weigh in his favor when evaluating the question of potential conflicts of interest. After coming to the United States as a teenager, Applicant completed high school and earned his college degree here. He registered for the Selective Service, though he was not a U.S. citizen, so that he could assist the United States if he were needed. He married here and his children are native-born U.S. citizens. He is raising his family here, and hopes to buy a home in the near future. He has been employed for approximately ten years, and has contributed to federal projects since 2004. Applicant has spent half of his life in the United States, and has demonstrated that he intends to remain here. I conclude that he would choose these strong U.S. ties over his foreign connections, in the event that a conflict of interest arose. AG ¶ 8(b) applies. I find for Applicant on Guideline B.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Foreign family ties raise security concerns because of the potential for conflicts of interest and foreign influence. Here, Applicant's ongoing relationship with family members in Jordan raises such concerns. He is in frequent contact with his parents, and he has traveled to Jordan four times since 2002. However, Applicant has lived half of his life in the United States. His education, marriage, children, and his employment represent deep ties to the United States. He has contributed to federal contracts since 2004, and has held an interim security clearance with no evidence of security issues. Given these facts, and Applicant's significant ties to the United States, I conclude that he would resolve any conflict of interest in favor of the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline B

FOR APPLICANT

Subparagraph 1.a. - 1.g.:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge