



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-00743
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: B. Daniel Lynch, Esquire

August 24, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On August 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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.

On September 16, 2009, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on December 1, 2009. DOHA issued a notice of hearing on March 2, 2010, and I convened the hearing as scheduled on March 17, 2010. The Government offered Exhibits 1 through 5, which were received and admitted without objection after Exhibit 1 was redacted. Applicant testified on his own behalf and submitted Exhibits A and B, at the time of hearing, which were also admitted without objection. Seven additional witnesses also testified on Applicant's behalf. DOHA received the transcript of the hearing (Tr) on

March 25, 2010. I granted Applicant's request to keep the record open until April 7, 2010, to submit additional documents, and Department Counsel had until April 14, 2010, to indicate whether or not he had any objections to the documents that Applicant submitted. Applicant timely submitted one additional document, which has been identified and entered into evidence as Exhibit C. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant and the other witnesses, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to the country of Jordan. The request and the attached documents were admitted into evidence as Exhibit 5 . The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted that all of the SOR allegations 1.a. through 1.g., are correct. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant and his father, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 51 years old. He has been married since 1991. His wife was born in Kuwait as a Jordanian, and she became a United States citizen in 1997. Applicant and his wife have four children, and they are all United States born citizens. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Applicant was born in 1958 in the West Bank, which at that time was under the control of Jordan. It is currently under Israel's control. He lived there until approximately 1977. He moved to Kuwait for a brief period, and then he moved to England, where he lived from 1977 to 1979. He attended college in England. In 1979 and 1980, he attended an American college in Spain. In 1981, he emigrated to the United States to attend college here, and he has lived in the United States since then. In 1989, he received a Bachelor of Science degree in Electronics, and in 1991 he became a United States citizen. He has been employed for several different companies, but since 1994, he has worked as a technician at an Air Force base for different contractors, within the same communications squadron. He estimated his assets in the United States at \$125,000.

(Guideline B - Foreign Influence)

The SOR lists seven allegations, regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, Applicant has admitted all of the allegations listed:

1.a. Applicant's mother is a citizen of Jordan and resident of Israel. Applicant is close to his mother and has visited her on several occasions, as reviewed in 1.g., below. His last visit was to see her as she is extremely ill, on 24 hour oxygen support. His mother once came to visit Applicant in the United States, but then she returned to Israel. (Tr at 138.)

1.b. Applicant has a brother, who is a citizen and resident of Jordan. Applicant testified that he calls his siblings "occasionally during holidays for a very short time, maybe two or three minutes at most." (Tr at 117.) None of his siblings is currently employed by any government entity or has been in the past. (Tr at 138.) None of his siblings has ever come to visit him in the United States.

1.c. Applicant has a brother, who is a citizen of Jordan and resident of United Arab Emirates. As stated above, none of Applicant's siblings is currently employed by any government entity or has been in the past. (Tr at 138.)

1.d. Applicant has two other brothers, who are citizens of Jordan and residents of Israel. Again, none of Applicant's siblings is currently employed by any government entity or has been in the past. (Tr at 138.)

1.e. Applicant has five sisters, who are citizens of Jordan and residents of Israel. At the hearing, Applicant testified that one of his sisters has moved to Canada, but the others still reside in Israel. (Tr at 124.) Again, none of Applicant's siblings is currently employed by any government entity or has been in the past. (Tr at 138.)

1.f. Applicant's mother-in-law is a citizen and resident of Jordan. Applicant has very little contact with her.

1.g. Applicant has traveled to Jordan and/or Israel in at least 1994, 1997, 1999, and 2008. All of his trips were to visit his mother, and they each were between three and six weeks in duration. (Tr at 105-106.) He has always used his United States passport when visiting any other country. (Tr at 111.) Applicant had a Jordanian passport, but he sent it to his employer's security officer, who tore it and rendered it unusable. Applicant submitted a letter from his security officer confirming this. (Exhibit 4.)

Applicant's mother has owned some property in Israel, but Applicant indicated that he has renounced any claim to it, and it has been divided among his siblings. He has no interest in any property outside of the United States. (Tr at 107-110.)

At the hearing, Applicant indicated he would be willing to renounce his Jordanian citizenship, and the record was left open to allow Applicant the opportunity to renounce his Jordanian citizenship. Applicant, through his counsel, submitted a post hearing document, which included the instructions for a Jordanian citizen to renounce his citizenship. (Exhibit C.) Applicant's attorney indicated that Applicant was not able to renounce his citizenship because he did not meet certain criteria. These included the fact that Applicant did not have a passport to return, because the Security Officer had destroyed it, Applicant has never had a family identification card, and Applicant never served in the Jordanian military, nor could he prove he was unavailable for military service during the times he was eligible for military service. So while Applicant had the will to renounce his Jordanian citizenship, he was unable to actually do it.

Mitigation

As stated above, seven witnesses testified on Applicant's behalf. They all were extremely laudatory in describing Applicant. He was described as a "go to guy with good moral character" who is "trustworthy and with good moral character." (Tr at 36-37.) Among the other positive terms used to describe Applicant were "very dependable, very honest, and a very upstanding character." (Tr at 61-63.)

Applicant submitted 19 very positive character letters in Exhibit A, from individuals who know and have known Applicant in a variety of employment situations. He was described as a "sincere and hard working professional whose character and ethical standards are without peer." Another letter stated that Applicant "has strong family values, is very devout, honest, law abiding, trustworthy, well-educated, reliable, quiet & non aggressive."

Current Status of Jordan

I take administrative notice of the following facts regarding Jordan. Jordan is a small country located in the Middle East with a constitutional monarchy. Jordan is ruled by King Abdullah II. It has followed a pro-western foreign policy and has had close relations with the United States for six decades. Despite Jordan's aggressive pursuit of terrorists, the threat of terrorism remains high in Jordan. Terrorist organizations currently target the United States for intelligence collection through human espionage and by other means.

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 useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 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. Those that could be applicable in this case include the following: AG ¶ 7 (a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Applicant’s relatives, who are citizens and residents of Jordan or Israel, and who continue to have, in the case of his mother, a very close bond to Applicant, make AG ¶ 7(a) a concern to the Government. I find that AG ¶ 7(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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(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,” is applicable to this Applicant and controlling for the following reasons:

Applicant is a U.S. citizen, who has lived in the U.S. since 1981 and been a United States citizen since 1991. Appellant’s wife has been a U.S. citizen since 1997. The four children of Applicant and his wife are solely U.S. citizens and residents. Applicant never served in the military of a foreign Government, and he has only been employed in the United States. All of Applicant’s assets are in the United States. Finally, Applicant had seven impressive individuals testify on his behalf as to his honesty and trustworthiness. I therefore conclude Guideline B for Applicant.

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

