



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



In the matter of:)
)
) ISCR Case No. 09-03047
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

May 26, 2010

Decision

CREAN, THOMAS M., Administrative Judge:

On November 14, 2007, Applicant submitted a Questionnaire for Sensitive Position (SF 86) for a position with his employer requiring access to classified information. On September 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns for foreign influence 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on September 26, 2009.

Applicant answered the SOR on October 5, 2009. He admitted the seven factual allegations under Guideline B, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 14, 2009, and the case was assigned to me on January 14, 2010. DOHA issued a Notice of Hearing on January 25, 2010, for a hearing on March 10, 2010. I convened the hearing as scheduled. The Government offered three exhibits, marked Government Exhibits (Gov. Ex.) 1 through 3,

which were received without objection. Applicant did not submit any exhibits, but testified on his own behalf. I kept the record open for Applicant to submit documents concerning his performance of duty with his employer. Applicant timely submitted his Performance Assessment and Development reviews for 2007, 2008, and 2009. (App. Ex. A through C, Performance Reviews) The Government had no objection to the admission of the performance reviews. (Gov. Ex. 4, Memorandum, dated March 15, 2010) DOHA received the transcript (Tr.) of the hearing on March 22, 2010. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issues

Department Counsel submitted formal requests that I take administrative notice of certain facts relating to Israel, Jordan, Palestine, and Columbia. The requests and attached supporting documents were not admitted into evidence but are included in the record as Hearing Exhibits. Applicant had no objection to the requests for administrative notice or the attached documents. The facts administratively noticed are set out in the Findings of Fact. (Tr. 8-9, 14-17, Hearing Exhibit I through IV)

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all of the factual allegations under Guideline B as raised in the SOR.

Applicant is a 42-year-old systems architect manager for a defense contractor. He was born in what is now called the West Bank in the Middle East. At the time he was born, the area was under the jurisdiction of Jordan. Applicant completed high school in the area, and went to Egypt to start his college studies in 1989. He came to the United States in 1993 for his final year of college. He received a Bachelor of Science degree in Electrical Engineering from a United States university in 1994. He also earned a Master of Computer Science degree at a United States university in 2000 while working full-time for the defense contractor. He has been working on a Doctoral Degree in Industrial Engineering from a United States university since 2002. He anticipates taking his comprehensive examination prior to submitting his dissertation topic this summer. After receiving his Bachelor of Science degree, he worked in an electronics store from 1994 until he was hired by his defense contractor employer in 1997. He has been employed by the defense contractor for the last 12 years. (Tr. 18-21, 28-30; Gov. Ex. 1, SF 86, dated November 14, 2007) Applicant's performance with his employer has been excellent. He has been rated as a high contributor. He is noted for having excellent systems integration and team leadership skills. He is willing to go the extra mile and exceeds key objectives and expectations. He is rated as a can-do self-starter who is continually improving. (App. Ex. A through C, Performance Reviews. 2007, 2008, 2009)

Applicant immigrated to the United States in 1993 at the age of 25. He became a United States citizen at his first opportunity in February 2007. When Applicant came to the United States, he traveled on a Jordanian passport. At that time, the people from his

area of the Middle East were under the jurisdiction of Jordan. If anyone required a passport, it was issued by Jordan. Applicant received a Jordanian passport because he planned to study abroad. Applicant has never been an Israeli citizen. He has not been a Palestinian citizen since that country or authority did not exist when he lived in his home area. Applicant received a United States passport when he became a United States citizen in 2007. On his 2007 security clearance application, Applicant noted that he was a dual citizen of the United States and Jordan. At the same time he completed the application, he gave his Jordanian passport to his facility security officer and it was destroyed. Applicant does not know of a formal procedure to renounce his Jordanian citizenship, but believes he renounced Jordanian citizenship when he destroyed his Jordanian passport. He now considers himself exclusively a United States citizen. (Tr. 21-26, 49-51, 58-60; Gov. Ex. 3, Destruction Certificate, dated November 12, 2007)

Applicant's immediate family still resides in the area where he was born and raised. It is a small town of about 5,000 to 6,000 people. Like most small towns, everyone knows everybody. His mother died in 1990. His father is 80 years old, not literate, and farms the same small plot he has farmed all of his life. Applicant talks to his father about once a week. (Tr. 30-32) Applicant has three brothers and four sisters. One brother is deceased. His oldest brother lives in Jordan and is a supervisor in a clothes manufacturing business. He talks to this brother about once a month. (Tr. 32) His other brother is a pharmacy assistant who lives in the house with his father. He has occasional contact with this brother when he calls his father. (Tr. 33-36) One sister also lives in the house with his father and he talks to her occasionally when he talks to his father. His other three sisters are married and live close to his father. One brother-in-law is deceased, and the other two work in construction. He talks to his sisters about once a month. (Tr. 36-38) He considers his relationship with his family to be close (Tr. 53-54) Applicant does not own property in Palestine. He does not know if he is entitled to inherit his father's property in Palestine. At most, he would share the rights to the property with his brothers and sisters. All of Applicant's property and resources are in the United States. He owns his own house in the United States. (Tr. 43-47)

Applicant made two trips back to his home area in the West Bank, in 1998 and 2007, since leaving for school in 1993. (Tr. 52-53) Applicant has no special plans to visit his family since such a trip is very expensive. Applicant has sent his father funds to assist him particularly with medical care. Applicant believes that over the years he probably sent his father a few thousand dollars. Applicant's family sacrificed to send him to school, so he feels an obligation to assist his father. He recently sent about \$300 to assist with medical expenses. (Tr. 43-45)

Applicant was married to a United States citizen when he was attending college, but the marriage only lasted one year. He married again in 1997, shortly before starting work with the defense contractor. His second and present wife was born and raised in Columbia, but came to the United States to work and has a permanent resident green card. Her application for United States citizenship is pending. They have two children who are United States citizens and attend the local schools. They participate in the normal activities for children in the United States. His wife's father is deceased. Her mother and three of her four brothers are citizens and residents of Columbia. His

mother-in-law is a retired school teacher in her 80s. She visits Applicant and his family for a few months almost every year. In fact, she had just left to return home shortly before the hearing. He does not talk to her very much since her only language is Spanish and Applicant does not speak Spanish. One of his brothers-in-law is a citizen and resident of the United States who is working as a hospital pharmacist. One of his brothers-in-law is a senior officer in the Columbian military. Applicant sees him a few times a year when he comes to the United States on military business. His other two brothers-in-law frequently visit the United States. One is a college dean, and the other is an architect. His wife's family is financially independent and does not need any financial support from him or his wife. Applicant has made only one trip to Columbia, and has no plans to make a trip in the future. (Tr. 26-29, 38-45, 53-54)

In Guideline B cases, the identity and nature of the country where foreign contacts are located must be considered. In this case, Jordan must be considered because one of Applicant's brothers resides in Jordan. Palestine and Israel must be considered since both have some interest in and control of the West Bank area where Applicant's family is located. Columbia must be considered because of the location of Applicant's wife's family.

Jordan is an ally of the United States, and the two countries have enjoyed close relations for over 60 years. Jordan has a constitutional monarchy form of government and a developing economy. There are some human rights issues in Jordan as well as a continuing threat of terrorism. Jordan continues to aggressively pursue terrorist in the country. Jordan also treats individual with dual United States and Jordanian citizenship as if they were only Jordanian citizens. Dual citizens are subject to the same obligations to the country as ordinary citizens. (See, Hearing Exhibit I, United States Department of State, Background Note, Jordan, dated February 2009)

The control and governance of the West Bank area where Applicant was born and raised and where his family still lives has been disputed by Jews and Arabs since the beginning of the Twentieth century. The area called Palestine was created after World War I and was under the control of a British Mandate. Even with the British Mandate, the control and governance of the area continued to be contested. After World War II, the British withdrew and the Jewish people in the area proclaimed the independent state of Israel. Some of the Arab population moved to Jordan or the West Bank. An Arab nationalist organization, the Palestine Liberation Organization, was established in 1967 and pushed for Arab national liberation and was recognized in the Arab community as the legitimate representative of the Palestinian people. In 1967, Israel took control of a large part of the contested area, to include the West Bank, and the Arabs in the area came under the control of Israel. The conflict between the Palestinians and the Israelis continued through the 1960s and 1970s. In the 1980s, the conflict intensified. In 1988, Jordan ceded all of its claims to the territory. Israel withdrew from part of the contested area but continued to occupy the West Bank. The conflicts in the area continue today.

Fatah, the Arab nationalist political party, dominated the PLO from its founding in 1969 until the death of its long time leader in 2004. In 2006, Hamas, a religious and

political organization formed around Palestinian nationalism and Islamic fundamentalism took over control of Fatah. They called for the destruction of Israel and the establishment of an Islamic state in Palestine. It rejected peace accords and waged intermittent terror attacks to undermine peace efforts. Hamas was designated by the United States Department of State as a Foreign Terrorist Organization (FTO). There are also other Palestinian groups labeled as FTO by the United States. In June 2007, infighting between Fatah and Hamas led to Hamas controlling the Gaza strip and Fatah the West Bank. The area continues to remain unstable. The United States urges its citizens to exercise caution when traveling to the West Bank and avoid travel to Gaza. There are reports the Palestinian authorities resort to torture, arbitrary and prolonged detention, corruption, and other human rights violations. United States citizens have been injured or killed in the area. Foreigners, including Americans, have been kidnapped to use as bartering tools. The threat of hostage taking remains a primary concern for Americans and foreigners in the area.

Israel is the United States' largest trading partner, and has a technologically advanced economy. While the relationship between the United States and Israel is close, there are some serious issues. The United States is concerned about Israel's sale of sensitive equipment and technologies to other countries, its active collection of proprietary information, including from the United States, and the illegal export of controlled technologies from the United States to Israel. (See, Hearing Exhibit II, Congressional Research Service Report for Congress, *The Palestinian Territories; Background and U.S. Relations*, October 12, 2007; hearing Exhibit III, United States Department of State, *Background Notes, Israel*, October 2007).

Columbia is the second largest country in South America and has a constitutional, multi-party democracy. United States citizens are warned of the dangers of traveling to Columbia because of violence from narco-terrorists groups. There is a potential for violence by terrorists in all parts of the country. The terrorist organizations continue to kidnap and hold people of all nationalities and occupations to use as barter and bargaining chips. Numerous organizations in Columbia have been designated by the United States as FTOs. The largest, Revolutionary Armed Forces of Columbia (FARC), carries out bombings in urban area targeting civilians and civilian infrastructure, government officials, politicians, and soldiers. While there are improvements, serious human rights issues remain. (See, Hearing Exhibit IV, United States Department of State, Country Report, *Western Hemisphere Overview*, April 30, 2009).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.

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 for 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 about potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B: 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 the 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 consideration 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 ¶ 6)

Applicant's wife resides with him and their two children in the United States. She is a permanent resident alien with a green card, and has applied for United States citizenship. Her Columbia citizenship does not create a security concern because she

lives with her family in the United States, her husband and children are United States citizens, and her application for citizenship is pending.

The citizenship of Applicant's father and siblings still residing in the West Bank is uncertain. They could be citizens of Palestine, Jordan, or Israel. The exact citizenship of his family does not affect the determination of Applicant's access to classified information. Their location in the West Bank is what creates the security concern. Applicant has frequent and extensive contact with his father and siblings in the West Bank. He talks to his father and the siblings living with his father almost weekly, He talks to his other siblings in the area monthly. He sends his father money to assist with his medical care. Applicant also has monthly telephone contact with his brother in Jordan. Even though he has returned to the West Bank only twice since leaving, the latest in 2007, he admits he has a close relationship with his family. Applicant's contact with his family in the Middle East raises security concerns under Foreign Influence Disqualifying Conditions (FI DC) 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); and FI DC 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 or technology and the individual's desire to help a foreign person, group, or country by providing that information).

Applicant does not have the same level of contact with his wife's family members who are citizens and residents of Columbia because they do not speak the same language. He sees his in-laws only when they visit the United States. However, his wife has a close relationship with her mother and siblings in Columbia. His wife's relationship with her family raises FC DC AG ¶ 7(d) (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).

The mere existence of a foreign family member is not sufficient to raise the above disqualifying conditions. As Applicant repeatedly pointed out in the hearing, a lot of people have family members in foreign countries and they cannot change the place of their origin. The nature of Applicant's contact with his family members in the West Bank and Jordan, and with his in-laws in Columbia must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime a family member lives subject to a foreign government. The facts that heighten the risk for Applicant in the West Bank, Jordan, and Columbia are the extensive human rights abuses, terrorist activities, and the on-going conflict and struggle for control of the West Bank area.

In support of being granted access to classified information, Applicant raised facts to mitigate the security concerns for his family in the West Bank, Jordan, and Columbia. I have considered Foreign Influence Mitigating Conditions (FI MC) AG ¶ 8(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.); FI MC 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); and FI MC AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." The underlying premise was that an applicant should not be placed in a position where he or she is forced to make a choice between the interest of the family member and the interest of the United States. There was no balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the United States interest.

The nature of the human rights abuses, terrorist threats, and conflicts in the West Bank and Columbia places a more significant burden on Applicant in mitigating the disqualifying conditions and the security concerns. The nature of the government in Jordan and the efforts by the government to fight and control terrorism places less of a burden on Applicant concerning his relationship with his brother in Jordan. Applicant's relationship with his family is close, but the relationship with his wife's family is not close. He talks weekly to his father and sends him funds for medical needs. He talks to his siblings living with his father when he calls his father. He talks to his other sisters and his brother in Jordan monthly. His wife talks to her family frequently, but he does not talk to them. His relationships with his family in West Bank and Jordan are close and not casual so Applicant could be placed in a position of having to choose between his family members and the interests of the United States. The nature of the fluctuating political situation, the terrorist threats, and threat of kidnappings in the West Bank places him in a position where he would be forced to chose between his family members in the West Bank and the interests of the United States. The strong government in Jordan and its close relationship with the United States will not place him in a position to chose between his brother there and the interest of the United States. His relationship with his wife's family is not close since he rarely talks to them except when they infrequently visit him. It is unlikely he would be placed in a position to help or provide support to an organization in Columbia over the interests of the United States. In regard to Jordan and Columbia, there is no heightened risk of foreign exploitation, manipulation, pressure, of coercion, or conflict of interest between his obligation to the United States and his contacts in Jordan or Columbia. Accordingly, FI MC AG ¶ 8(a) and FI MC AG ¶ 8(c) do not apply to Applicant's father and siblings in the West Bank, but do apply to his wife's family in Columbia and his brother in Jordan.

Applicant has little, if any, sense of loyalty to the authorities or governments in the West Bank. He spent his early years on the West Bank but left for school and has only returned twice in over 17 years. Some of the governing factions were not even in existence when he left. He came to this country for education and remained to raise a family and work in his chosen profession. He became a United States citizen as soon as he could, and has been very successful working for his employer. He is highly regarded by them. The United States has offered him freedom, justice, tolerance, and an opportunity to reach his potential. His family in the West Bank does not enjoy these benefits. While he provided funds to assist his father, he sent the funds as a dutiful son and not to assist the government of the West Bank or any terrorist element in the country.

While Applicant's loyalty to the United States is strong, he has an equally strong loyalty to his family in the West Bank. There may be a conflict of interest between his loyalty to his family and his loyalty to the United States. In balancing all of the factors mentioned and considered above, I am not satisfied Applicant's loyalty to the United States as opposed to his loyalty to his family is such that he can be expected to resolve any conflict of interest in favor of the United States interest. The same cannot be said for his wife's family in Columbia. He has little if any sense of loyalty to Columbia or his wife's family. He only visited the country once, and only sees his in-laws when they visit him in the United States. The language barrier between them is a hindrance to establishing a sense of personal loyalty. Applicant's wife is close to her family, but Applicant's contact with them is so minimal there is no heightened risk or conflict of interest between his loyalty to them and his loyalty to the United States. FI MC AG ¶ 8(b) does not apply to his family in the West Bank but does apply to his wife's family in Columbia. Applicant has not met his burden to show that his contact with his family in the West Bank does not cause a security concern. He has met his burden to establish his wife's family in Columbia and his brother in Jordan does not cause a security concern.

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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a determination concerning Applicant's eligibility for access to classified information. Applicant has a close relationship with his family in the West Bank. There is extensive terrorist activity in that area and it is an area in which major terrorist organizations operate. These simple facts alone might be sufficient to raise security concerns for Applicant's vulnerability to coercion, exploitation, or pressure. However, mere family ties with people in a foreign country are not, as a matter of law, disqualifying under Guideline B. Whether an applicant's family ties in a foreign country pose a security risk depends on an evaluation of the overall facts and circumstances of the family ties, and the heightened risks involved in that area.

Applicant has strong loyalties to the United States, and has no loyalties to any government or organization, terrorist or otherwise, in the West Bank. However, the decision to deny a person a security clearance is not a strict determination of an applicant's loyalty. Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access to classified information. The nature of the governance and terrorist threats on the West Bank and the potential for exploitation of his family members living there outweigh his loyalty to the United States. Applicant's access to classified information is decided not on the basis of his loyalty to the United States but the geography, history, and politics of the area where his family resides. Applicant's family in the West Bank creates a heightened risk related to national security. Because of these factors, Applicant has not met the strict guidelines established for the grant of eligibility for access to classified information. For all these reasons, I conclude Applicant has not met his burden of mitigating all potential security concerns arising from his family in the West Bank. He has met his burden concerning his wife's family in Columbia and his brother in Jordan. Overall, on balance, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance because of his family in the West Bank. Accordingly, I find against Applicant and he is not granted 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:	AGANST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge