



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



In the matter of:)
)
-----) ISCR Case No. 09-03110
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro Se*

December 29, 2009

Decision

HARVEY, Mark, Administrative Judge:

In 1966, Applicant was born in Jordan. In 1988, he immigrated to the United States. In 2001, he became a U.S. citizen. His spouse and two children are U.S. citizens. However, he has retained significant connections to Jordan. He traveled to Jordan in 2004 and in May 2009. He has siblings living in Jordan, and owns a share of some property in Jordan. He was equivocal about the future status of his Jordanian passport and citizenship. Access to classified information is denied.

Statement of the Case

On October 10, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) (Government Exhibit (GE) 1). On August 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines B (foreign influence) and C (foreign preference) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 17, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge (HE 3). On September 16, 2009, Department Counsel was prepared to proceed. On September 21, 2009, DOHA assigned the case to me. On October 19, 2009, DOHA issued a hearing notice (HE 1).¹ On October 30, 2009, the hearing was held. At the hearing, Department Counsel offered two exhibits (GE 1-2) (Transcript (Tr.) 24-25), and Applicant did not offer any exhibits (Tr. 28). There were no objections, and I admitted GE 1-2 (Tr. 26). I received the transcript on November 5, 2009.

Procedural Ruling

Department Counsel requested administrative notice (AN) of facts concerning Jordan (Tr. 17-18; HE 4, AN Request). Department Counsel provided supporting documents to show detail and context for these facts (HE 4, Ex. I to IV). Applicant did not object, and I granted Department Counsel's request (Tr. 18).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact²

Applicant's response to the SOR admitted the allegations in ¶¶ 1.b to 1.e, and denied the allegation in SOR ¶¶ 1.a and 2.a (HE 3). He explained or clarified the facts relating to SOR ¶¶ 1.a and 2.a (HE 3). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 43-year-old employee of a government contractor who is seeking a security clearance (Tr. 6). He has been employed by the same employer for the last 22

¹Applicant waived his right to 15-days notice of the date, time and place for his hearing (Tr. 15-16).

²The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

months (Tr. 40). In 1997, he received a bachelor's degree from a U.S. college with a major in electrical and computer engineering (Tr. 6-7). He married his first wife in 1995, and they were divorced in 2000 (GE 1). In December 2002, he married his wife in Jordan (Tr. 45; GE 1). He has never served in the U.S. military (GE 1).

Foreign Influence

Applicant was born in Jordan and attended school in Jordan through his second year of college (Tr. 38). He was drafted into Jordan's Army (Tr. 56). From 1986 to 1988, he served in the Jordanian Army; however, he was not an officer (Tr. 56-57; GE 2 at 5). He immigrated to the United States in 1988 (Tr. 38). In 2001, he became a U.S. citizen (GE 1; GE 2 at 32).

Applicant's wife was born in Jordan (Tr. 45). In 2002, she moved to the United States (Tr. 45). In 2006, she became a citizen of the United States (Tr. 58; GE 1). Applicant and his wife have two children who are ages six and 15 months (Tr. 46). Both of his children were born in the United States (Tr. 46). His son has been to Jordan twice, and both times his son traveled on his U.S. passport (Tr. 46). He has not applied for Jordanian citizenship for his children (Tr. 47).

Applicant's father is deceased (GE 1). His mother is a dual citizen of Jordan and the United States. She owns land in Jordan. She spends approximately eight months per year in the United States and four months per year in Jordan (Tr. 40-41; SOR ¶ 1.a). When she stays in the United States, she lives with Applicant or his brother (Tr. 41). She lives with Applicant about four months each year (Tr. 41). When she is in Jordan, Applicant communicates with her about once a month (Tr. 42). His mother is a housewife (Tr. 42).

Applicant has six brothers who are citizens and residents of Jordan (Tr. 43-44; GE 2; SOR ¶ 1.b). Two of his brothers visit Applicant every year or so in the United States (Tr. 55). He talks to one of his brothers every couple of months on average (Tr. 55). Sometimes he communicates with one of his brothers more frequently, perhaps once a month (Tr. 55).

Applicant has two sisters who are citizens and residents of Jordan (Tr. 43-44; GE 2; SOR ¶ 1.c). One of Applicant's sisters married a Jordanian who became a German citizen (Tr. 44-45; GE 2; SOR ¶ 1.d). They now reside in Germany (Tr. 44-45; GE 2; SOR ¶ 1.d). She is a Jordanian citizen (Tr. 43-44; GE 2; SOR ¶ 1.d).

Applicant's mother-in-law and father-in-law are citizens of Jordan (Tr. 43-44; GE 2; SOR ¶ 1.e). They are both retired teachers (Tr. 47). His father-in-law moved to the United States from Jordan in September 2009, and his mother-in-law moved to the United States in October 2009 (Tr. 48). They have applied for U.S. residency (Tr. 47). His in-laws are now living with Applicant (Tr. 48). When his in-laws lived in Jordan, Applicant communicated with them every few days, and he visited them when he went to Jordan (Tr. 48). In the last five years he visited Jordan twice, in 2004 and May 2009 (GE 2 at 21, 28, 35).

Applicant owns a home in the United States and has a bank account in the United States (Tr. 58-59). He votes in U.S. elections (Tr. 59). One of his brothers is a U.S. citizen (Tr. 59).

Foreign Preference

Applicant maintains his Jordanian citizenship for three reasons: (1) he wanted to protect his inheritance in Jordan; (2) it is more convenient for him to keep a Jordanian passport than to obtain a visa to visit Jordan; and (3) he learned that renouncing his Jordanian citizenship would be expensive (Tr. 49; SOR ¶ 2.a). Applicant said he would be willing to give up or renounce his Jordanian citizenship and destroy his Jordanian passport, if he knew he would receive a clearance (Tr. 42-43, 49; GE 2 at 4, 13). He held an active Jordanian passport from 2002 to 2007 (GE 1). At his hearing, he said he obtained his Jordanian passport before he became a U.S. citizen (GE 2 at 4); however, this is incorrect because he became a U.S. citizen in 2001. His Jordanian passport expired in January 2007 (Tr. 68; GE 2 at 3). He used his Jordanian passport in 2004 to visit Jordan and Syria (GE 2 at 3). His Jordanian inheritance is a share in a three-unit apartment, and he valued it at about \$8,000 to \$10,000 (Tr. 49-53). When his mother goes to Jordan, she stays in one of the apartments (Tr. 51). Two of his brothers also live in the apartments (Tr. 51).

Applicant loves the United States (Tr. 54). He wants to raise his children in the United States because of the freedom and equality in the United States (Tr. 54). In Jordan there is discrimination between people that is not present in the United States (Tr. 60). In the United States there is freedom of speech, and hard work is rewarded (Tr. 60). He considers the United States to be his home, and not Jordan (Tr. 59).

Character Evidence

There is no derogatory information concerning his police or financial records.³ He has never been fired from a job. He has never been arrested. He has never used illegal drugs, or been involved in an alcohol-related incident.

The person who hired Applicant as an electrical engineer for a government contractor in 2007 and is now in his chain of supervision described him as an extremely good employee, very punctual, and one of his best workers (Tr. 30-35, 37). He said Applicant maintains the confidentiality of information and is very trustworthy (Tr. 36). He recommended that Applicant receive a security clearance (Tr. 36).

³ The source for the facts in this paragraph is his security clearance application (GE 1).

Jordan⁴

Jordan is a small, Middle Eastern country governed by a constitutional monarchy. Jordan's population is about 5.9 million. Jordan has a pro-Western foreign policy, and has had close relations with the United States for sixty years. Torture, arbitrary arrest, prolonged detention, overcrowded prisons, denial of due process, and restrictions on freedom of speech are Jordanian human rights problems. Despite aggressive governmental action against terrorists, the threat of terrorism in Jordan remains high. Terrorists in Jordan target U.S. interests to exploit and undermine U.S. national security interests. Al-Qaida agents plotted to kill President Bush when he visited Jordan in 2006. Al-Qaida claims responsibility for the November 2005 bombings of three hotels, a rocket attack in August 2005, and the assassination of a U.S. diplomat in 2002.

Terrorist groups conduct intelligence activities as effectively as state intelligence services. A Pew Research Center Global Attitudes survey in 2009 indicated 19 percent of Jordanian Muslims expressed confidence in Usama bin Ladin. The Pew survey noted that Jordan was the only Muslim country in which most residents had favorable opinions of HAMAS, a U.S. designated foreign terrorist organization.

Policies

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

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

⁴The facts in the section concerning Jordan are from Department Counsel's factual summary, except for some comments about the relationship between the United States and Jordan, which are from the U.S. Department of State, *Background Note: Jordan*, Feb. 2009, U.S. Department of State, *Country Specific Information Sheet—Jordan*, May 6, 2009, and the Jordan section of U.S. Department of State, *Country Reports on Terrorism 2008*, Chapter 2—Country Reports: Middle East and North African Overview, dated Apr. 30, 2009 (HE 4, enclosures I, II, and IV).

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

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

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines B (foreign influence) and C (foreign preference) with respect to the allegations set forth in the SOR.

Foreign Influence

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

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 indicates four conditions that could raise a security concern and may be disqualifying in this case:

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

AG ¶¶ 7(a), 7(b) and 7(d) apply. Applicant, his mother, brothers and sisters, father-in-law, and mother-in-law were born in Jordan. Six of his brothers and one sister currently reside in Jordan. Applicant's mother lives with Applicant four months of the year, and she spends about four months a year in Jordan. Applicant's father-in-law and mother-in-law have been living with Applicant for several months, and they are Jordanian citizens. His father-in-law and mother-in-law are not U.S. citizens. He visited Jordan in 2004 and May 2009. He has frequent communications with his mother when she is in Jordan and with his in-laws.

Although Applicant's communications with his siblings living in Jordan are not particularly frequent, his spouse may have more frequent, non-casual communications with family members living in Jordan. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20,

2002). Applicant has not rebutted this presumption. Applicant's relationship with his mother because of her frequent and lengthy visits to Jordan is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Applicant's relationships with his family members in Jordan creates a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" any family members who are in Jordan. For example, when Applicant's mother is visiting Jordan, Applicant would be exposed to a risk of coercion through his mother. Applicant is also subject to potential coercion through his relationships with his in-laws.

The mere possession of close family ties with a family member living in Jordan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of Jordan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Jordan or who are Jordanian citizens do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Jordan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

Applicant has an interest in a property in Jordan valued at about \$10,000. This interest is sufficient to raise a security concern under AG ¶ 7(e).

Applicant's mother lives with him for about four months per year, with his brother in the United States for about four months per year, and in Jordan the other four months each year. For the last two months, Applicant's in-laws have lived with Applicant. His in-

laws are Jordanian citizens, and they are not U.S. citizens. His mother and in-laws have very close connections to Jordan and to their relatives living in Jordan. His in-laws and mother are likely to return to Jordan for lengthy periods, where they will be potentially be exposed to pressure and coercion from terrorists.

While there is no evidence that intelligence operatives from Jordan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Jordan has a problem with terrorism. Applicant's relationship with family members living in Jordan or who are very likely to return to Jordan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Jordan endangered by terrorists by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his mother, in-laws, and siblings and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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.;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant visited Jordan in 2004 and May 2009. Applicant has frequent contact with his mother and in-laws, who live in Jordan for significant periods of time. However, he does not have frequent contacts with his siblings who live in Jordan. His relationships with his siblings in Jordan are mitigated under AG ¶ 8(c) because his contacts and communication with them is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation. However, because of his connections to Jordan and to his in-laws and mother, Applicant is not able to fully meet his burden of showing there is “little likelihood that [his relationships with his relatives who are Jordan citizens] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has strong family connections to the United States. Although his mother and spouse were born in Jordan, his mother, spouse, and two children are all U.S. citizens and now live in the United States. One of his brothers is now a U.S. citizen. Applicant owns a house in the United States and has a bank account in the United States.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family members who either live in Jordan or spend extended periods of time visiting Jordan. He frequently communicates with his mother and in-laws and less frequently with his siblings. There is no evidence, however, that terrorists, criminals, the Jordan Government, or those conducting espionage have approached or threatened Applicant or his family in Jordan to coerce Applicant or his family for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States’ long history of a good relationship with Jordan.

AG ¶¶ 8(d), and 8(e) do not apply. The U.S. Government has not encouraged Applicant’s involvement with family members living in Jordan. Applicant is not required to report his contacts with family members living in Jordan.

AG ¶ 8(f) applies to mitigate the security concern raised by his property interest in Jordan. In comparison to his property interests in the United States, and his employment in the United States, the value of his property in Jordan is such that it is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure him. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e).

In sum, the primary security concern is Applicant's close relationship with his mother, spouse, and in-laws. There is a risk that these relatives may be subject to pressure or coercion from terrorists either directly during their visits to Jordan, or indirectly through other relatives and friends living in Jordan.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, "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 in Applicant's case:

(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;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election;

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

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

In 2002, after Applicant became a U.S. citizen, he received a Jordanian passport. In 2004, he used the Jordanian passport to visit Jordan. He said in his response to DOHA interrogatories that he maintained his Jordanian citizenship to protect his interest in his Jordanian property. AG ¶¶ 10(a)(3) and 10(a)(5) apply.

AG ¶ 11 provides conditions that could mitigate security concerns:

- (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;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(e) applies and mitigates any concern about Applicant's possession of a Jordanian passport from 2002 to 2007. None of the other mitigating conditions fully apply. He offered to renounce his Jordanian citizenship provided he receive a security clearance.

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 have incorporated my comments under Guidelines B and C in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. In 1988, Applicant immigrated to the United States. In 2001, he became a U.S. citizen. His spouse, mother, brother, and two children are U.S. citizens. He owns property in the United States, has a U.S. bank account, votes in U.S. elections, and has U.S. employment. He does not have frequent contacts with his siblings who live in Jordan. There is no derogatory information concerning his police or financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs, or been involved in an alcohol-related incident. One character witness endorsed approval of a security clearance for Applicant. He loves the United States and wants to raise his children in the United States because of the freedom and equality in the United States. He considers the United States to be his home, and not Jordan.

The circumstances tending to support denial of a clearance for Applicant are more significant than the factors weighing towards grant of his clearance. Applicant, his brothers, sisters, mother, wife, father-in-law and mother-in-law were born in Jordan. Applicant went to Jordan in 2004 and in May 2009. His mother visits Jordan for four months annually, and lives with Applicant for four months annually. His in-laws have been living with Applicant for about two months before his hearing. He frequently communicates with his mother and in-laws while they are living in Jordan.

Applicant said he wanted to maintain his Jordanian citizenship for three reasons: (1) he wanted to protect his inheritance in Jordan; (2) it is more convenient for him to keep a Jordanian passport than to obtain a visa to visit Jordan; and (3) he learned that renouncing his Jordanian citizenship would be expensive. Applicant's offer to give up his Jordanian citizenship if he would receive a clearance is a conditional offer and does not fully mitigate concerns. He held an active Jordanian passport from 2002 to 2007, and he did not rule out renewing his Jordanian passport. He used his Jordanian passport in 2004 to visit Jordan and Syria. His Jordanian inheritance is a share in a three-unit apartment, and he valued it at about \$8,000 to \$10,000.

A Guideline B decision concerning Jordan must take into consideration the geopolitical situation in Jordan, as well as the dangers existing in Jordan.⁵ The danger of violence or coercion from terrorists in Jordan is a more dangerous than in many countries. Terrorists continue to threaten the government of Jordan, and the interests of the United States, as well as those who cooperate and assist the United States. The United States and Jordan are allies in the war on terrorism. Jordan and the United States have close relationships in diplomacy and trade.

⁵ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

After weighing all the facts and circumstances in this decision, including Applicant's demeanor and sincerity at his hearing, I conclude he has mitigated the foreign preference security concerns; however, he has not carried his burden of mitigating the foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁶ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude Applicant is not eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b to 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge

⁶See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).