



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-04531
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

November 19, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant is a dual U.S. and Jordanian citizen whose parents, brother, sister and in-laws are resident citizens of Jordan. His wife and 14-year-old son are also dual citizens, and his other brother is a Jordanian citizen living in the Netherlands. He has worked in the aviation field for many years, during which he flew with chartered U.S. military transport planes and with a candidate during the 2008 presidential primary campaign. Applicant provided insufficient evidence to mitigate resulting security concerns. Based upon a review of the case file, pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on January 26, 2009. On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence). 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 adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 5, 2010. He answered the SOR in writing on May 12, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 10, 2010, and the case was assigned to me on June 22, 2010. DOHA issued a Notice of Hearing on July 9, 2010, and I convened the hearing as scheduled on August 19, 2010. The Government offered exhibits (GE) 1 and 2, which were admitted without objection. Department Counsel also requested administrative notice of the facts concerning Jordan as set forth in Hearing Exhibit (HE) I, and supported by Government publications submitted as Administrative Notice (AN) exhibits I through VI. After some discussion, Applicant agreed to the truth of these facts, of which I took administrative notice. Pertinent facts are set forth below. Applicant offered exhibit (AE) A, which was also admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 26, 2010.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor, where he began working in mid-2008 after four months of unemployment. Preceding that, he worked for 14 years for a charter airline company until it went out of business.¹ In his response to the SOR, he formally admitted each factual allegation. Applicant's admissions, including his statements in response to DOHA interrogatories,² are incorporated in the following findings.

Applicant was born and raised in Jordan. He attended an aviation engineering college in Egypt from 1977 to 1982, and graduated with a bachelor's degree. He then performed his two-year mandatory military service in the Royal Jordanian Air Force. He then worked for a Middle Eastern airline company in Jordan. In 1987, while on vacation in Egypt, he met an American woman who was also there on vacation. She invited him to come to the United States to visit her the following year, and they decided to marry. Applicant moved to the United States in 1989, which he had wanted to do for most of his life, and they were married in October of that year. He became a naturalized U.S. citizen in September 1993. He and his first wife divorced in March 1994.³

Applicant remarried in January 1996. His second wife was a friend of his sister, and he met her in Jordan about four years before they married. Both his sister and his wife are pharmacists. His wife was born in Kuwait, where her father worked most of his life, also as a pharmacist. She became a naturalized U.S. citizen in approximately 2000, and retains her Jordanian citizenship as well. They have a 14-year-old son who was born in the United States. During his first visit to Jordan, they applied for and received dual Jordanian citizenship for him. Applicant's wife and son return to Jordan every year to visit family. They have both U.S. and Jordanian passports. Applicant's Jordanian

¹GE 1; Tr. 84.

²GE 2.

³GE 1; Tr. at 47-49, 84-85.

passport has been expired for at least 17 years, and he has no intention to renew it. When he travels with them, they all use their U.S. passports to go through the same lines. He does not know what passports his wife and son use when they travel without him.⁴

Applicants mother, father, sister, and younger brother are citizens and residents of Jordan. His parents are both in their mid-70s and retired. His father receives the Jordanian equivalent of Social Security retirement payments from the government, and both receive government medical care. Before retiring, his father worked as a journalist in the Middle East office of a U.S. television network for about 20 years. His mother did not work outside their home. Applicant's sister is single, and lives with their parents in Amman, the capital city. She is a licensed pharmacist who works as an inspector for the Jordanian government health ministry. His younger brother also lives in Amman with his wife and their three children. He is a manager in a large private bank. Applicant's elder brother also works in the aviation industry. He remains a Jordanian citizen but presently lives in Europe and works for an airline there.⁵

Applicant's father-in-law and mother-in-law are also Jordanian citizens residing in Amman and are, respectively, in their late 70s and late 60s. They live primarily off their substantial savings, but his father-in-law also owns and runs a car dealership with his two sons. He also has two sisters-in-law living in Jordan, one of whom is a dentist who is married with children, and the other of whom works as an administrative assistant in a hotel.⁶

Applicant has close and continuing contact with his parents and sister several times a week, and is in less-regular contact with his brothers. During the last seven years, he traveled to Jordan to visit his family in 2004, 2005, 2007, and July 2010, for about two or three weeks each time, and intends to continue traveling there for such purposes.⁷ Applicant has no property interests in Jordan, and all his financial interests are in the United States, where he and his family intend to continue to live.⁸

During Applicant's employment with the charter airline, he regularly flew on planes transporting U.S. troops and their family members to and from bases around the world. He was provided a Department of Defense identification card permitting him access to military bases. He testified that he worked for some time in Kuwait where he was on a base that came under fire from terrorists. He was offered and encouraged to provide documentation concerning his responsibilities and performance in connection

⁴GE 1; Tr. 52-54, 66-67, 72-73, 79-83.

⁵GE 1; GE 2; Tr. 58-66.

⁶GE 1; Tr. 66-71.

⁷GE 1; GE 2; Tr. 76-78, 97-98.

⁸Tr. 49-51, 74-75, 78-79.

with these duties, but declined to do so. He also testified that he received clearance from the Secret Service, and regularly flew on the plane transporting one of the major party presidential candidates for three months during the 2008 primary election campaign. He provided a picture of himself with the candidate to corroborate this testimony.⁹ Applicant provided no other evidence concerning his character, responsibility, trustworthiness, or work performance.

I take administrative notice of the facts concerning Jordan that are set forth in HE I, and they are incorporated herein by reference. Of particular significance are the facts that terrorist organizations remain active and pose a continuing threat against U.S. and western interests in Jordan despite strong efforts by the pro-Western government there to counter those threats. In addition to regular and relatively recent attacks and bombings, these terrorist organizations continue to target the United States for intelligence collection.

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7

⁹AE A; Tr. 86-103.

of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

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. Department Counsel argued that the evidence in this case established one foreign influence DC: “(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.”¹⁰ Although not separately asserted by Department Counsel, 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;” was also raised by substantial evidence due to his loving relationship with his wife and her family.

Terrorist organizations are present and active in Jordan despite the best efforts of the government there to combat them. These organizations actively target U.S.-

¹⁰Tr. at 24-26, 104-107.

related interests and gather intelligence in connection with those efforts. Accordingly, his strong family connections and frequent visits there have more potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d) than would similar connections in many other countries.

Applicant shares living quarters with his wife, who is also a citizen of Jordan, and whose parents are resident citizens of Jordan. His father, mother, younger brother, and sister are also resident citizens of Jordan. These immediate-family relationships are all presumed to be close and loving, and Applicant's testimony confirmed that to be the case in his family.

These facts meet the Government's burden of production by raising the aforementioned foreign influence DCs. Applicant's regular, close, and personally significant contacts, relationships, and connections with Jordan shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a) and (d) security concerns¹¹ are:

(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.; and

(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.

Applicant did not demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his close and ongoing family ties in Jordan. He has strong emotional relationships with his parents, brother, sister and in-laws (through his wife), all of whom are resident citizens there. He has visited family in Jordan at least every third year over the past decade, and his wife and son do so annually. He has provided services to U.S. military and political personnel in the course of performing his former job duties, but offered insufficient evidence that his family's situation would make it unlikely that they could be subjected to foreign inducement, manipulation or duress. Under such circumstances, he would be forced to choose between their interests and those of the U.S. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8 (a) and (c).

¹¹The Government did not raise security concerns under AG ¶ 7(b), so the corresponding MC at AG ¶ 8(b) is not separately analyzed. The concern is not that Applicant would want to help Jordan or his family there by providing them information but rather that they are at heightened risk of coercion, etc., from the terrorist organizations operating there. Issues that overlap with other MCs are addressed below.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

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

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Security concerns in this case do not involve any personal misconduct, dishonesty, irresponsibility, or disloyal activity by Applicant. The primary whole-person issues of concern under these circumstances are his completely understandable and appropriate relationships with, and visits to, his close relatives in Jordan. It would be unrealistic to conclude that he has no ongoing obligations and loyalties toward his family members there, and all evidence is to the contrary. These considerations raise the realistic and substantial potential for pressure, coercion, exploitation, or duress, given the active terrorist threat in Jordan, and are likely to continue. (AG ¶¶ 2 (8) and (9).) Applicant offered insufficient evidence of professional, social, or financial ties to the United States that might weigh in favor of a whole-person finding of exceptional allegiance to United States interests.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence considerations.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge