



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 09-05212 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

November 22, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Foreign Influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 10, 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 (EO) 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 23, 2010, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on June 14, 2010, and reassigned to me on June 18, 2010. DOHA issued a notice of

hearing on July 28, 2010, and the hearing was convened as scheduled on August 18, 2010. DOHA received the transcript of the hearing (Tr.) on August 26, 2010.

Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted written requests that I take administrative notice of certain facts about Jordan and the United Arab Emirates (UAE). Applicant did not object to either request, and they were approved. The requests and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE) I and II. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified, called three witnesses, and submitted Exhibits (AE) A through K, which were admitted without objection.

Findings of Fact

Applicant is 47 years old. He seeks a security clearance so that he can work as a linguist in Iraq. He was born in Jordan. He has a bachelor's degree from a Jordanian university. He was married from 1991 to 2003. He married his current wife in 2003. He has two children from his first marriage, ages 18 and 16. He has a five-year-old child with his current wife.¹

Applicant served in the Jordanian military for five years in the 1980s and 1990s. Jordan has mandatory military service for two years. Applicant agreed to serve five years in order to gain certain benefits not available to the two-year enlistees. He worked for a Jordanian government agency from 1993 to 2000. The government agency was unrelated to defense and intelligence. He lived in the UAE from 2000 to 2003, and worked for a business owned by one of the sheikhs. He was separated from his first wife while he was in the UAE. She remained in Jordan. He met his future wife, a U.S. citizen, while he was working in the UAE. She was temporarily working in the UAE. He returned to Jordan after the business was sold. He and his first wife divorced. Applicant and his wife married in Jordan in 2003. He immigrated to the United States in 2003 and became a U.S. citizen in 2007. He has not formally renounced his Jordanian citizenship through the Jordanian government, but he destroyed his Jordanian passport and considers himself solely a U.S. citizen.²

Applicant worked as a linguist for a defense contractor in Iraq from 2006 to 2007. He was exposed to improvised explosive devices (IEDs) and mortar attacks. He

¹ Tr. at 26, 38, 45-46, 53; GE 1-4.

² Tr. at 39-49, 61-62; Applicant's response to SOR; GE 1-4; AE K.

returned to the United States after about three months because he injured himself carrying gear, requiring surgery.³

Applicant's parents, three siblings, first wife, and his two oldest children are Jordanian citizens and residents. He has a sibling who is a Jordanian citizen and a resident of Qatar. He also has a sibling who is a Jordanian citizen and a resident of the UAE.⁴

Applicant's father is retired from a non-government industry. His mother does not work outside the home. Applicant's 18-year-old child has worked various odd jobs. His 16-year-old child is a student. One sibling in Jordan owns a shop. Applicant's sibling in the UAE used to work in a hotel. Applicant is unsure what the sibling currently does for a living. His sibling in Qatar works for a school. One of Applicant's sisters is single. She lives with Applicant's parents. One of his sisters is married to a lawyer with a private practice. None of Applicant's family members work for, or are associated with, any terrorist organization or the governments of Jordan, Qatar, or the UAE.⁵

Applicant talks to his children in Jordan about once a month. He talks to his parents every other month. He rarely talks to any of his siblings. He has little to no contact with any of his friends that are still Jordanian citizens and residents.⁶

Applicant has not returned to the UAE since he left in 2003. He has visited Jordan three times since he immigrated to the United States. Applicant and his wife own a home in the United States. They have various U.S. investments and retirement accounts. He has no foreign assets. At one time, Applicant expected to inherit property in Jordan. However, he gave up his inheritance rights when he became a U.S. citizen, and his father has sold the property. Applicant considers the United States his home. He has no plans to move back to Jordan or any other country. Applicant credibly testified that he would report to security personnel any attempt to use his family against him.⁷

Applicant submitted numerous character letters, and three witnesses, including his wife, testified on his behalf. The witnesses and the authors of the letters praised Applicant's dependability, trustworthiness, honesty, common sense, reliability, judgment, responsibility, integrity, sense of duty and honor, and his love of America.⁸

³ Tr. at 36-37, 67-68; GE 1-4.

⁴ Applicant's response to SOR; GE 1-4.

⁵ Tr. at 53-55, 58, 66-68; Applicant's response to SOR; GE 1-4.

⁶ Tr. at 37-38.

⁷ Tr. at 29-30, 34, 39, 48-51, 68-69, 77; Applicant's response to SOR; GE 1-4.

⁸ Tr. at 16-35; AE A-J.

Jordan

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. Jordan has followed a pro-western foreign policy and has had close relations with the United States for six decades.

The Jordanian government respects human rights in some areas, but its overall record continues to reflect some problems. Problems include: torture, arbitrary arrest, prolonged detention, denial of due process, infringement on citizens' privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement.

Under Jordanian law, any male relative may prevent a woman or child from leaving Jordan by placing a hold on their travel with the Jordanian authorities, even if they are U.S. citizens. Jordanian law applies to dual U.S.-Jordanian citizens.

The Jordanian government publicly condemned terrorist acts throughout the world, practiced strict security measures, passed new anti-terror legislation, and disrupted several terrorist plots. Despite Jordan's aggressive pursuit of terrorists, the threat of terrorism remains high in Jordan. Al-Qaida has focused terrorist activities against Jordan and U.S. interests in Jordan. Terrorist organizations have targeted the United States for intelligence through human espionage and by other means. International terrorist groups have conducted intelligence operations as effectively as state intelligence services.

United Arab Emirates

The UAE is a federation of emirates, each with its own ruler. The federal government is a constitutional republic, headed by a president and council of ministries. Traditional rule in the UAE is generally patriarchal with political allegiance defined in terms of loyalty to tribal leaders. There are no democratically elected legislative institutions or political parties, and no general elections. Only 15-20% of the UAE's population are UAE citizens. The remaining population includes significant numbers of other Arabs, including many Iranians. The government of UAE has expressed fears that the large Iranian – origin community in the Dubai emirate could pose a threat to UAE stability.

There are problems in the UAE with regard to human rights, including, arbitrary arrests and indefinite incommunicado detention, government restriction on civil liberties, a lack of judicial independence, political organizations and political parties. Labor unions are illegal and private associations must follow censorship guidelines and receive governmental approval before anything is published.

The UAE does not recognize dual nationality, and UAE authorities have confiscated U.S. passports of dual nationals.

The United States and the UAE have had friendly relations since 1971. The UAE contributes to the continued security of the Persian Gulf, and is a partner against terrorism. However, the UAE is one of only three countries that recognized the Taliban as the legitimate government of Afghanistan and two of the September 11, 2001, hijackers were from the UAE. The UAE's cooperation in counterterrorism operations to target persons suspected of smuggling cash from terrorist-source countries has been met with resistance. Dubai, in the UAE, has been the key transfer point for illicit sales of nuclear technology to Iran, Libya, and North Korea. There have also been cases of illegal export, or attempted illegal export, of U.S. restricted, dual use technology to the UAE, including products with potential nuclear and military applications.

Policies

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

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 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 EO 10865 provides that adverse 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

The security concern for Foreign Influence is set out in AG ¶ 7 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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; and
- (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 has immediate family members and friends who are citizens and residents of Jordan. He has a sibling who is a Jordanian citizen and a resident of the UAE. He also has a sibling who is a Jordanian citizen and a resident of Qatar. Jordan and the UAE continue to have human rights issues, and they both have been victimized by terrorists. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

Applicant traveled to Jordan three times since he immigrated to the United States. That is evidence of his ties and affection for his family. It does not establish any disqualifying conditions not already addressed by other allegations.⁹ SOR ¶ 1.h is concluded for Applicant.

Applicant served in the Jordanian military and worked for a Jordanian government agency before he immigrated to the United States and became a U.S. citizen. That information is relevant and adds context to Applicant's foreign ties, but it does not raise any independent Foreign Influence security concerns. SOR ¶¶ 1.i and 1.j are concluded for Applicant.

It has not been established that Applicant expects to inherit an interest in land in Jordan. SOR ¶ 1.k is concluded for Applicant.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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

(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.

Applicant has immediate family members in Jordan and the UAE. Those countries have continuing human rights and terrorist concerns. Because of the nature of those governments and the terrorist concerns, I am unable to find AG ¶ 8(a) applicable.

Applicant has been in the United States since 2003, and he has been a U.S. citizen since 2007. His wife is a U.S. citizen, and his youngest child was born in the United States. He served the Iraqi mission in 2006 to 2007. He served in a combat zone and was subject to IEDs and mortar attacks. He credibly testified that he would report to security officials any attempt to use his family members against him. The Appeal Board has stated that such testimony, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security.¹⁰ In

⁹ See ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005).

¹⁰ ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I find, because of Applicant's relationships and loyalties in America, that he can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments

under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and his service in Iraq. I also considered the totality of Applicant's family ties to Jordan, Qatar, and the UAE. 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."¹¹ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He credibly testified that he would report any attempt to use his family members to coerce him to reveal classified information. The Appeal Board has held that "generally, an applicant's statements, by themselves, as to what he would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."¹² Jordan has had close relations with the United States for six decades. The United States and the UAE have had friendly relations since 1971. However, both Jordan and the UAE have human rights and terrorism issues. The complicated state of affairs in those countries places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Foreign Influence security concerns.

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹² ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

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: FOR APPLICANT

Subparagraphs 1.a-1.k: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge