



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 09-08736  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esq., Department Counsel  
For Applicant: Joseph Testan, Esq.

April 26, 2011

**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on August 20, 2009 and August 31, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on August 31, 2010, detailing security concerns under Guideline B, Foreign Influence, Guideline C, Foreign Preference, and Guideline E, Personal Conduct, that provided the basis for its preliminary decision to deny him a security clearance. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on September 13, 2010. He answered the SOR in writing on September 24, 2010. Applicant retained counsel and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on November 3, 2010. I received the case assignment on January 3, 2011. DOHA issued a notice of hearing on January 6, 2011 for a hearing on January 26, 2011. I cancelled the hearing on January 21, 2011. DOHA issued a second notice of hearing on January 28, 2011, and I convened the hearing as scheduled on February 16, 2011. The Government offered exhibits marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE Q, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on February 25, 2011. I held the record open until March 2, 2011 for Applicant to submit additional matters. Applicant timely submitted AE R through AE Z without objection. The record closed on March 2, 2011.

## **Rulings**

### **Motion to Amend**

Department Counsel moved to amend SOR allegation 3.a to change the date of Applicant's e-QIP from August 1, 2009 to August 31, 2009. Applicant's counsel agreed to the change. The Motion was granted<sup>1</sup>

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Jordan. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1a-1f. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.i, of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 2.a, 3.a, 3.b, and 3.c of the SOR. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 34 years old, works as a safety engineer for a Department of Defense contractor. He has worked for this employer for six years. In his most recent performance assessment, his supervisor rated him as a high contributor. She described him as an extremely valued employee. He exceeded his objectives, took on additional

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<sup>1</sup>Tr. 7-8.

assignments, and managed an extremely large workload. He is a great team leader with excellent interpersonal skills, and he has excellent customer service skills. He received two cash awards in 2010 for his performance.<sup>2</sup>

Applicant submitted eight letters of recommendation from his supervisor, pastor, friends, coworkers, and family. They all highly praised him as an individual. They considered him a person of high integrity and described him as dependable, forthright, honest, religious (Christian Orthodox), fair, ethical, hard worker, trustworthy, and professional. He is devoted to his family, his church, and his country. He is respected by his family and his church and would adhere to all security requirements. He loves the United States and has never compromised confidentiality at work. His letters of recommendation reflected a high regard for him in numerous areas of his life.<sup>3</sup>

Applicant was born in Amman, Jordan. He moved to the United States with his mother in 1991 at age 14. They joined his two older sisters, who were attending college in the United States. He graduated from an American high school and from an American university with a bachelor's degree in 1998 and a master's degree in 2002. He became a naturalized U.S. citizen in 1996. He married in 2008.<sup>4</sup>

Applicant's wife was born in the United States to Jordanian parents. She is not only a citizen of the United States, but she is also a citizen of Jordan because of her parents. She has lived in the United States since birth. She works in the United States. She held a Jordanian passport, which expired. She has no intent to renew this passport.<sup>5</sup>

Applicant's mother and father were born in Jordan. They are now U.S. citizens as well as citizens of Jordan. Applicant's mother has lived in the United States for 20 years and does not intend to return to Jordan to live. His father has lived in the United States for 10 years and does not intend to return to Jordan to live. His parents own a house and a car in the United States. His parents do not have any connection to the Jordanian government.<sup>6</sup>

Applicant's two sisters are citizens of the United States and Jordan. One sister lives in the United States with her two children and husband, who are citizens of the United States only. She has been in the United States for 25 years and has no plans to return to Jordan to live. His other sister is a dentist and is married to a mechanical engineer, who is a dual citizen of the United States and Jordan. This sister and her

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<sup>2</sup>GE 1; AE A; AE Q; Tr. 28.

<sup>3</sup>AE F - AE M.

<sup>4</sup>GE 1; AE Q; Tr. 24-27.

<sup>5</sup>AE E; Tr. 24-25.

<sup>6</sup>GE 1; AE Q; Tr. 28-29.

husband work in private industry and live with their children in Jordan. They do not have any contacts with the Jordanian government. He thinks they will return to the United States when their children begin college. He last visited with this sister when she came to the United States for his wedding in 2008. Until a year ago, he talked with her about once a month. Since then, he has spoken with her about once every six months. He changed his level of contacts because of the security process.<sup>7</sup>

Applicant has aunts, uncles, and cousins who live in Jordan. His contact with these relatives occurs on special occasions and about once every one to two years. His mother-in-law and father-in-law were born in Jordan. They have lived in the United States for over 40 years. They are U.S. citizens and citizens of Jordan. They own property and cars in the United States and have investments in the United States. They do not own any property or have any assets in Jordan, nor do they have any connection with the Jordanian government. His wife does not have any siblings in Jordan.<sup>8</sup>

After Applicant became a U.S. citizen, he continued to renew and use his Jordanian passport when he traveled to Jordan. Since becoming a U.S. citizen, Applicant traveled to Jordan in 1998, 2001, 2002, and 2007. He used his U.S. passport for other foreign travel, including trips to France and Brazil.<sup>9</sup>

Applicant used his Jordanian passport for travel convenience in and out of Jordan. By using this passport, he did not need to obtain a visitor's visa to enter Jordan. After his last trip in 2007, he left his Jordanian passport with his sister living in Jordan. After meeting with the security clearance investigator in October 2009, Applicant obtained his Jordanian passport and gave it to his facility security officer (FSO) on March 31, 2010. He believed that by doing this, he had renounced his Jordanian citizenship. He later understood that his belief was incorrect. After the hearing, he submitted an application to Jordan to renounce his citizenship and paid the required \$4,004 fee, as he had expressed a willingness to renounce his Jordanian citizenship on several occasions.<sup>10</sup>

Applicant owned an apartment building with his parents and sisters in Jordan. The family sold this building to a third party in 2004. His two sisters own a vacant piece of land in Jordan. He does not have interest in this property.<sup>11</sup>

Applicant and his wife own the house in which they live. He owns one rental property and an interest in his parents home. He owns two rental properties with his

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<sup>7</sup>GE 1; GE 3; AE Q; Tr. 29-31; 92.

<sup>8</sup>GE 1; GE 3; AE Q; Tr. 32-33, 96.

<sup>9</sup>GE 1; GE 4; AE Q; Tr. 41-42.

<sup>10</sup>GE 2; GE 4; AE R - AE Z; Tr. 43-44.

<sup>11</sup>AE B; AE C; Tr. 35-40.

sister who lives in the United States, one rental property with his sister who lives in Jordan, and an undeveloped piece of land with his sister who lives in Jordan. All these properties are located in the United States. He owns two cars. His bank account, 401(k) account, and salaried saving account are with U.S. banks or brokerage houses.<sup>12</sup>

Applicant recalls accessing the computer system on several occasions to enter information on his e-QIP. He denies completing two separate e-QIP applications, but he recalls trying to provide correct information on his Jordanian passport. He denies trying to hide information about his Jordanian passport. Neither party could explain how two e-QIPs were submitted for Applicant within 11 days.<sup>13</sup>

Applicant completed investigation request number 6310911, his e-QIP, on August 20, 2009. (AE Q) He submitted his signature form for this e-QIP on August 20, 2009, as shown by his transmission report of that date. He transmitted this document at 16:45:42 (4:45 p.m.). His August 20, 2009 e-QIP shows that it was certified on August 20, 2009 at 20:24:20 (8:25 p.m.). The dash code for both documents is the same. When he completed this document, he listed his Jordanian passport with an issue date of August 2007 and an expiration date of August 2012. He noted that this passport was current.<sup>14</sup>

The Government submitted an investigation request number 6364893, his e-QIP, with a date of completion as August 31, 2009. (GE 1) All but one signature form show the date of August 31, 2009. The official archival copy PDF hash code and the dash code on this e-QIP differs from the official archival copy PDF hash code and the dash code on the August 20, 2009 e-QIP. All information in this e-QIP is the same as the August 20, 2009 e-QIP, except the information on his Jordanian passport. The August 31, 2009 e-QIP lists his Jordanian passport with an issue date of August 1992 and expiration date of August 2002. Applicant noted that it had expired.<sup>15</sup>

In both e-QIPs, Applicant acknowledged his dual citizenship with Jordan. He indicated that he had been a dual citizen from 1996, when he became a U.S. citizen, to the date of the e-QIP. He listed his travels to Jordan and other countries in the last seven years. He listed all his extended family members in Jordan.<sup>16</sup>

In response to the questions in e-QIP Section 23 inquiry about his drug use within the last seven years, Applicant indicated that he had used marijuana from July 2002 until September 2002 at a couple of parties and did not plan to use it in the future.

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<sup>12</sup>AE N; AE O; Tr. 35-40.

<sup>13</sup>Tr. 45-49, 74-88.

<sup>14</sup>AE P; AE Q, including p. 42. Applicant provided a copy of his August 20, 2009 e-QIP.

<sup>15</sup>GE 1, including p. 42, 56; AE Q p. 1.

<sup>16</sup>GE 1; AE Q.

The Government mailed interrogatories to Applicant seeking further information on his drug use. The interrogatories sought information about all his past drug use. Applicant reviewed his e-QIP and provided the same information as he provided in his e-QIP answers, which limited his information about his past drug use to the last seven years.<sup>17</sup>

In 2001, Applicant applied to the Federal Bureau of Investigation (FBI) for a job as a contract linguist. The Government submitted an unsigned FBI report, dated December 31, 2001, which contains information about Applicant's marijuana use. Applicant provided information which showed he used marijuana from the summer of 1995 until 1997 on his SF-86 (security application) He later asked to revise his end date of use to August 2001. He also advised that he used hard drugs in 1996, and that he had purchased marijuana in the 1990s. He indicated that he stopped using marijuana because he had applied to the FBI for a job. Between his FBI interview in December 2001 and July 2002, he did not use marijuana. He described his use of marijuana in 2002 as "bad judgment". In 2002, he decided to concentrate on his career, to find a wife, to focus on family and his church, and not to party.<sup>18</sup>

At the hearing, Applicant explained that when he completed the interrogatories, he reviewed his e-QIP to make sure his answers to the interrogatories were consistent with his e-QIP answers. He did not think about his use of marijuana and drugs since high school, but about his answer on the e-QIP, which focused on the last seven years. He acknowledged at the hearing that the request for all drug use was clear. His brain did not register the word "ever" when he answered the interrogatories. He does not know why, only that he was thinking seven years. He had no intent to hide his past use from the Government. The answers on his 2009 e-QIPs are correct and reflect his drug use and purchase for the prior seven years. His estimate to the FBI that he used marijuana 35 times is correct. He acknowledges that the FBI discontinued his background investigation because it was concerned about his drug use. He again stated that he has not used marijuana or any other drug since 2002. He has no future intent to use illegal drugs. Because it has been more than nine years since his interview with the FBI, his memory of information provided in that interview is vague.<sup>19</sup>

## **Jordan**

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. Jordan's population is about 5.9 million. Jordan has followed a pro-western foreign policy, and has had close relations with the United States for sixty years.

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<sup>17</sup>GE 1; GE 3; AE Q.

<sup>18</sup>GE 4.

<sup>19</sup>Tr. 53-58, 63-74.

The Jordanian government respects human rights in some areas, but its overall record continues to reflect some problems. Torture, arbitrary arrest, prolonged detention, overcrowded prisons, denial of due process, and restrictions on freedom of speech are Jordanian human rights problems. Jordan does not have a history of targeting U.S. or Jordanian citizens for protected information.

The Jordanian government publicly condemned terrorist acts throughout the world, implemented strict security measures, passed new anti-terror legislation, and disrupted several terrorist plots. Jordan has placed a strong emphasis on countering violent extremism, fighting radicalization, and strengthening interfaith coexistence and dialogue. Jordanian officials, including the King, strongly condemned extremist violence and the ideology that promotes it. Despite aggressive governmental action against terrorists, the threat of terrorism in Jordan remains high. Al-Qaida has focused terrorist activities against Jordan and U.S. interests in Jordan. Terrorists in Jordan target U.S. interests to exploit and undermine U.S. national security interests. Terrorist groups conduct intelligence activities as effectively as state intelligence services.<sup>20</sup>

## **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 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 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An

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<sup>20</sup>The information on Jordan is included in HE 1.a to 1.f.

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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions 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; and



(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.

Applicant's immediate family, which includes his wife, his parents, his father-in-law, mother-in-law, and one sister, reside in the United States near him. Thus, no security concern is raised by these family members. His other sister, a dual citizen of the United States and Jordan, resides in Jordan with her husband, also a dual U.S. and Jordanian citizen, and sons. Applicant has aunts, uncles, and cousins who are citizens of and reside in Jordan. Applicant maintains a normal familial relationship with his sister in Jordan. He has reduced his contact with her in the last year, but continues to have contact with her. He does not provide financial support to her. He contacts his cousins, aunts, and uncles once a year or less. He has visited his extended family in Jordan. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorist or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the Government of Jordan and terrorist organizations within these countries. The risk that an appellant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his sister and other relatives in Jordan raises a heightened risk of security concerns because of the activities of terrorists organizations in Jordan as the terrorist threats to safety and security is greater than concerns that the Jordanian Government will seek classified information. The information of record fails to show that the Jordanian Government engages in espionage activities in the United States or that it targets U.S. citizens in the United States or Jordan by exploiting, manipulating, pressuring, or coercing them to obtain protected information.

Under the guidelines, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Jordan cause security concerns, I considered that Jordan and the United States have a close relationship, and that Jordan is cooperating with the United States in the fight against terrorism, including taking new and increased actions against terrorists in Jordan. There is no evidence that the Jordanian government targets U.S. citizens for protected information. The human rights issues in Jordan continue to be a concern, and the terrorist organizations, not the Jordanian government, target U.S. citizens and U.S. interests in Jordan. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family members in Jordan. Because of the significant activities of terrorist

organizations in Jordan, Applicant's trips to Jordan and contacts with his family in Jordan raise a heightened risk concern under AG ¶¶ 7(a) and (b). A heightened risk concern is not raised under AG ¶ 7(d).

In deciding if Applicant has established mitigation under AG ¶ 8(a), I must consider:

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 under AG ¶ 8(b), I must consider whether Applicant has established:

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. interests,

and under AG ¶ 8(c), I must consider whether Applicant has established:

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's normal relationship with his family members is not a basis to deny him a security clearance; however, his burden of proof on mitigation requires him to provide information that shows that his family is not subject to coercion from terrorists. His family members have never held a political position and have not been targeted by the Jordanian government or terrorists. His family members in Jordan have not suffered any abuses from the Jordanian government or threatened by terrorists. His immediate family members are citizens and residents of the United States. He owns no property in Jordan. He does not have financial assets in Jordan. Balancing these factors as well as Jordan's cooperation in counterterrorism, and the lack of evidence that the Jordanian government targets U.S. citizens for protected information against Jordan's poor human rights record, I find that Applicant would resolve any conflict in favor of the U.S. interests. Likewise, any threats by terrorists organizations against Applicant's family in Jordan would be resolved in favor of U.S. interests. His loyalties are to the United States, not Jordan or terrorist organizations. Applicant has mitigated the Government's security concerns as to his family contacts specified in the SOR under AG ¶¶ 8(a) and 8(b). In addition, he has mitigated the Government's security concerns raised in SOR allegation 1.i because his contacts with his aunts, uncles, and cousins is casual and infrequent. AG ¶ 8(c) applies to this allegation.

## **Guideline C, Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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.”

Under the potential disqualifying conditions described in AG ¶ 10, the following condition could raise a security concern and may be disqualifying in this 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.

Applicant possessed a Jordanian passport since becoming a U. S. citizen in 1996. He used this passport to enter and exit Jordan when visiting family. The Government has established a *prima facie* case under Guideline C.

AG ¶ 11 provides conditions that could mitigate security concerns. I have considered mitigating factors AG ¶ ¶ 11(a) through 11(f), and especially the following: (b) the individual has expressed a willingness to renounce dual citizenship; and (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant filed the paperwork to formally renounce his Jordanian citizenship along with the \$4,004 fee. He also surrendered his Jordanian passport to his facility security officer on March 31, 2010. He has mitigated the Foreign Preference concerns under AG ¶¶ 11(b) and 11(e). Guideline C is found for Applicant.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

For this guideline to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his August 31, 2009 e-QIP when he failed to list his current Jordanian passport in Section 23. He, however, listed this information in the August 20, 2009 e-QIP. Both e-QIPs were certified by Applicant and received an official archive hash code. The most reasonable explanation for two e-QIPs is that when Applicant re-entered the system to add his expired passport information, the current passport information was unintentionally substituted for, instead of added to, the existing passport information which resulted in a new e-QIP, rather than an updated e-QIP, being submitted. The Government has not established that the Applicant intentionally omitted any information from his e-QIP or that he intentionally falsified the August 31, 2009 e-QIP. SOR allegation 3.a is found in favor of Applicant.

For AG ¶ 16(b) to apply, Applicant's omission must be deliberate. The Government established that Appellant omitted a material facts from his answers to the interrogatory questions about his past drug involvement. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. In his response, he denies, however, that he had an intent to hide information. When a falsification allegation is controverted, the Government has the burden of proving the omission was deliberate. Proof of an omission, standing alone, does not establish or prove an Applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an Applicant's intent or state of mind at the time the omission occurred.

Applicant acknowledged his 2002 drug use when he completed his e-QIP, which fell within the seven-year parameters of the question asked. When he received the multiple topic interrogatories from the Government, he reviewed his e-QIP to make sure he provided the same information in his answers to the interrogatories. He recognized at the hearing that the Government sought more information about his drug use than the e-QIP sought and that he did not provide this information. Given his later understanding about the scope of the Government interrogatories, his explanation that his brain did not register the word "ever" and his failure to manufacture a reason for his wrong answer support a finding that he did not intentionally provide false information to the Government about his past drug use and his purchase of drugs in the 1990s in his answers to interrogatories. Guideline E is found in favor of Applicant.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant immigrated to the United States as a young teenager. He enrolled in American schools and eventually became a U.S. citizen. Like many young people, he started smoking marijuana socially while a high school student. He continued his social marijuana use while a college student. He also experimented with cocaine for a year in college. After he graduated from college, he evaluated his future goals and decided to change his behavior and attitude towards his marijuana drug use. He decided that drugs were not a part of his future and stopped. He has not smoked marijuana in over eight years. He acknowledged he used drugs when he completed his e-QIP, but in keeping with the scope of the e-QIP questions, he only listed his summer 2002 marijuana use. He did not intellectually absorb the time frame covered by the DOHA interrogatories and thus, did not provide information about his youthful drug use. In hindsight, he recognized the interrogatory question asked for his complete history of illegal drug use. Still, he could not provide any reason for his incorrect interpretation of the scope of the information sought. Based on his credible testimony at the hearing about his thought process, he had no intent to hide information from the Government about his past drug. In reaching this conclusion, I considered the fact that he acknowledged his past drug use to the FBI and voluntarily updated the extent of his use to the FBI during his interview. By so

doing, he placed himself in a negative light with the FBI. His actions during the FBI process reflect his honesty described by his friends and coworkers. Given all the negative family information on his e-QIP and his disclosure of marijuana use in 2002 after completion of the FBI application, his knowledge that the FBI stopped processing his clearance application because of his drug use is not persuasive to conclude that he intentionally hid his past drug use when he answered the interrogatories.

Throughout the security clearance process, Applicant has been open about his and members of his family dual citizenship with Jordan and the United States, as well as his extended family in Jordan. Except for one sister, his immediate family members are residents of the United States, have been in the United States for a long time, and intend to stay in the United States. He owns several properties in the United States and none in Jordan. All his assets are in the United States. Applicant has been in the United States for nearly 20 years. While he occasionally visits Jordan, his strongest ties are to the United States. He provided his FSO with his Jordanian passport over a year ago, when he realized possessing the passport presented problems for getting a clearance. More recently, he paid the substantial \$4,004 fee to renounce his Jordanian citizen. His willingness to pay the high fee for renouncing his citizenship indicates a preference for the United States, not Jordan.

Applicant's supervisor, pastor, friends, coworkers, and family highly praised him as an individual. They considered him a person of high integrity and described him as dependable, forthright, honest, religious (Christian Orthodox), fair, ethical, hard worker, trustworthy, and professional. He is devoted to his family, his church, and his country. He is respected by his family and his church and would adhere to all security requirements. He loves the United States and has never compromised confidentiality at work. His letters of recommendation reflected a high regard for him in numerous areas of his life, including his work and ability to handle proprietary information.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign connections and personal conduct under Guidelines B (Foreign Influence), C (Foreign Preference), and E (Personal Conduct).

### **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.i: For Applicant

Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.c:	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.

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MARY E. HENRY  
Administrative Judge