



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



In the matter of:)
)
) ISCR Case No. 10-00450
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

October 24, 2011

Decision

Duffy, James F., Administrative Judge:

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

Statement of the Case

On March 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. DOHA acted 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) effective within the Department of Defense on September 1, 2006.

On March 21, 2011, Applicant answered the SOR and requested a hearing. Department Counsel submitted a notification that the Government was ready to proceed on April 4, 2011. The case was originally assigned to another judge and was reassigned to me on June 2, 2011. It was initially scheduled for a hearing on June 2, 2011, but that hearing was postponed. DOHA issued another notice of hearing on July 13, 2011, and

the hearing was convened as rescheduled on August 3, 2011. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) I. Department Counsel requested that administrative notice be taken of Hearing Exhibits (HE) II and III. Applicant had no objection to the administrative notice requests, and those requests were granted. Applicant testified and offered exhibits (AE) A through M that were admitted into evidence without objection. Applicant's Counsel requested that administrative notice be taken of HE IV. Department Counsel had no objection to Applicant's administrative notice request, and that request was granted. The record was held open until August 17, 2011, for Applicant to submit additional information. Applicant timely submitted AE N through R that were admitted into evidence without objection. HE V is Department Counsel's email indicating he had no objection to the post-hearing submission. DOHA received the hearing transcript (Tr.) on August 9, 2011.¹

Procedural Matters

In the SOR, two allegations were identified as ¶ 1.c. To correct this administrative error, the second of those allegations was re-lettered as ¶ 1.d and the remaining two allegations were re-lettered as ¶¶ 1.e and 1.f, respectively. Applicant had no objection to the re-lettering of the allegations.

Findings of Facts

In her Answer to the SOR, Applicant admitted each of the SOR allegations. Her admissions are incorporated herein as findings of fact.

Applicant's background

Applicant is a 36-year-old program analyst. She has been working for her current employer since June 2011. She has a bachelor's degree and a master's degree from a major U.S. university. She is married and has four children, ages 7, 8, and twins who are 12. This is the first time that she has applied for a security clearance.²

Applicant was born in the West Bank of the Palestinian territories. She was a Jordanian citizen by birth. A few months after her birth, her family moved to Kuwait. She was raised in Kuwait until 1990 when her family moved to Jordan. She completed high school in Jordan. In 1995, she came to the United States at the age of 20 to attend college. She became a U.S. citizen in November 2003. She has never lived in Saudi Arabia.³

¹ GE 3 was originally offered as HE III. At the hearing, however, it was converted to a government exhibit.

² Tr. 23-26; GE 1; AE J, K, I.

³ Tr. 23, 40-43, 62-63; GE 1.

Applicant's husband was born in Bangladesh and is a U.S. citizen. They met and married in the United States. He has owned businesses in the United States and currently works as a car dealer. His parents passed away before he came to the United States, and he has no brothers or sisters. All of Applicant's children were born in the United States. Her children only speak English. She has not registered her children with the Government of Jordan. She owns no property outside the United States. She has about \$70,000 of equity in her home in the United States and has about \$35,000 in savings accounts in the United States.⁴

Since becoming a U.S. citizen, Applicant has only used her U.S. passport to travel overseas. Her Jordanian passport expired in 2002. After departing the Palestinian territories as an infant, she has only returned there on one occasion for a short period in 2001. In the last seven years, she traveled twice outside the United States. On both of those occasions, she traveled to Jordan. Her first trip to Jordan was in 2006 for 70 days. Her second trip was in 2009 for 40 days. The purpose of both trips was to visit family. She stayed in rented apartments during those trips. During her trip in 2009, she also attended her youngest brother's wedding.⁵

Applicant's mother and father are citizens of Jordan and reside in both Jordan and the West Bank. They have residences in both places. She indicated that they reside in the West Bank for a few months of the year and in Jordan for the remainder of the year. Her mother never worked outside the home. Her father is a retired middle-school math teacher. He does not receive a pension. He now operates a small bookstore in the West Bank. She talks to her parents on the telephone about once every two or three months. She neither provides financial support to her parents nor receives financial support from them. In July 2011, she applied for her parents to immigrate to the United States. She expects those applications to be approved in the next six months.⁶

Applicant has two brothers. Her oldest brother is a citizen of Jordan and resides in the West Bank. He is a doctor who has a private medical practice. He received his medical training in Russia. Her youngest brother is a citizen of Jordan who resides in Saudi Arabia. He is a telecommunications engineer who works for a Swedish company. In 2010, her youngest brother gave her a gift of \$20,000 to assist in purchasing her home in the United States. Both of her brothers are married to Jordanian citizens who are housewives. She speaks to each of her brothers about once or twice a month. She does not have contact with her sister-in-laws because she does not know them well.⁷

Applicant has two living sisters. Both of her sisters are citizens of Jordan and reside in the West Bank. Her oldest sister is an elementary school teacher. She is

⁴ Tr. 24, 27, 34, 39, 42-43, 54-55, 60, 66-67; GE 1.

⁵ Tr. 26-27, 33-34, 55-59; GE 1.

⁶ Tr. 27-29, 39-40, 43-45, 56-59, 61-62, 65-66; GE 1; AE P, Q.

⁷ Tr. 30-31, 45-49, 60, 65; GE 1, 2; AE R.

married to a Canadian citizen who works for an international bank. Applicant's younger sister is a student at a university in the West Bank. Her younger sister lived in the United States for about three and half years when her husband was attending a U.S. university for a doctorate degree. While they resided in the United States, she was a housewife. Her brother-in-law is now a professor at a university in the West Bank. She has contact with her sisters about two or three times a year.⁸

Applicant's uncle is a citizen and resident of Jordan. Her last contact with him was in 2009 when she attended her brother's wedding in Jordan. She does not know whether he works or is retired. She does not know whether he ever served in the Jordanian military or worked for the Jordanian government. Applicant has a friend that is a citizen of Jordan. She met her friend in the United States. Her friend returned to Jordan for a couple of years. While her friend was in Jordan, she had contact with her about once a year. Her friend now resides in the United States.⁹

In responding to interrogatories in August 2010, Applicant stated,

After becoming a U.S. citizen, my allegiance and loyalty is to the U.S., the country that has honored me with its citizenship and gave me the chance to have a higher education and improve my financial situation. I has (sic) been here long enough to assimilate American values and culture. And I have no conflict with this allegiance. I have no benefits, rights or privileges from Jordan. I did not maintain my Jordanian citizenship. Traveling to Jordan has been for family visits and family occasion (sic) such as my brother wedding last year. I have no problem with no (sic) traveling to Jordan since my parents have a valid VISA to enter the U.S. any time and they already visited me three times. And I'm trying to apply for U.S. resident for my family to be able to live with me the rest of their life.¹⁰

At the hearing, Applicant indicated that she was willing to renounce her Jordanian citizenship. In her post-hearing submission, Applicant submitted a letter that was sent to the Jordanian Embassy renouncing her Jordanian citizenship. None of her family members have ever been employed by a foreign government or served in a foreign military. To her knowledge, her family members have never been involved with any terrorist group and never have been the victims of any violence.¹¹

Applicant's performance evaluations for the past three years indicated that she "meets and may exceed some goals." Her friends indicated that she is reliable, trustworthy, and a person of high moral character. She has been a Girl Scout volunteer

⁸ Tr. 31-32, 34-36, 49-51; GE 1, 2.

⁹ Tr. 36-37, 51-53; GE 1.

¹⁰ GE 2 at 156.

¹¹ Tr. 34, 40, 59, 61, 63-64, 66; GE 1, 2; AE O.

for over five years. She has 30 girls in a scout troop. Another Girl Scout volunteer described her as conscientious, honest, and trustworthy. The other volunteer indicated that she has led many successful projects during her work with the Girl Scouts.¹²

Jordan¹³

Jordan's government is a constitutional monarchy. It is ruled by a King, has a Council of Ministers selected by the King, and has a partially elected bicameral National Assembly. It has followed a pro-western foreign policy and has had close ties with the U.S. for decades. The Jordanian government also provides political and material support to the Palestinian Authority and its president.

Jordan's human rights record continues to reflect problems. Issues include torture, arbitrary arrests, prolonged detention, denial of due process, infringement of privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, and movement. Torture by the police and security forces is widespread.

Jordan aggressively pursues terrorists. It has enacted counter-terrorism legislation; prosecuted terrorism cases, including both Al-Qaida and non-Al-Qaida defendants; and investigated and disrupted terrorists' plots. Nevertheless, support for extremist and terrorist groups in Jordan remains high. Despite the government's determination to battle radicalization, the extremists' messages still find a receptive audience with a small but significant proportion of the total population.

Saudi Arabia¹⁴

Saudi Arabia is a monarchy ruled by the Al Saud Family. The government is the monarchy and there are no political parties or national elections. There are significant human rights problems, including severe restrictions on freedom of speech, press, peaceful assembly, and religion. Some prisoners are subjected to torture, abuse, violence, and forced confessions.

The U.S. and Saudi Arabia share a common concern about security, oil exports and imports, and sustainable developments. In addition to economic ties, the United States and Saudi Arabia have a longstanding security relationship. The U.S. military provides training and support in the use of weapons and other security-related services to the Saudi armed forces. The Department of State has issued travel warnings indicating there are ongoing security threats to Americans traveling in Saudi Arabia due to the continued presence of terrorist groups. The Saudi government has been active in confronting terrorism and extremist ideologies, which has included freezing assets and enforcing travel bans on certain of their citizens.

¹² Tr. 37-38, 53, 59; AE A through D and F through H.

¹³ HE III.

¹⁴ HE III.

Israel and the West Bank¹⁵

Israel is a parliamentary democracy whose prime minister heads the government and exercises executive power. Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem as a result of the 1967 War. Pursuant to negotiations between Israel and the Palestinians, the Palestinian Authority (PA) was established in the Gaza Strip and West Bank in 1994. The division of responsibilities and jurisdiction in the West Bank between Israel and PA is complex and subject to change. PA security forces are responsible for keeping order in certain areas, and the PA exercises a range of civil functions in those areas of the West Bank.

The Government of Israel may consider as Palestinian anyone who has a Palestinian identification number, was born in the West Bank or Gaza, or was born in the United States but has parents or grandparents who were born or lived in the West Bank or Gaza. Any such U.S. citizen may be required to use a PA passport when traveling to Israel using a PA passport. Without the PA passport, such Americans may be barred from entering or exiting Israel, the West Bank, or Gaza, or they may face serious delays at the ports of entry.

The United States and Israel have a close friendship based on common democratic values, religious affinities, and security interests. However, they have different policies on other important issues. The United States is concerned with Israeli military sales, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases. They have regularly discussed Israel's sale of sensitive security equipment and technology to various countries, including China. Israel reportedly is China's second major arms supplier, after Russia.

The National Counterintelligence Center's Report to Congress of Foreign Economic Collection and Industrial Espionage for 2000 and 2005, lists Israel as one of the active collectors of U.S. proprietary information. Israeli military officers have been implicated in this type of technology collection in the United States. There have also been cases involving illegal export, or attempted illegal export of U.S. restricted and dual technology to Israel.

Several groups operating in Israel, the West Bank, and Gaza have been designated as Foreign Terrorist Organizations by the Department of State. U.S. citizens, including tourist, students, residents and U.S. Government personnel, have been injured or killed by terrorists while in Israel, the West Bank, and Gaza. In the past, armed gunmen have kidnapped foreigners, including Americans, in Gaza and the West Bank. For safety and security reasons, U.S. Government personnel and dependents are restricted from traveling to many areas of the West Bank.

¹⁵ HE II, III, IV.

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 that 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 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 about 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 Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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. Two are potentially applicable here:

(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.

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk of greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

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.”¹⁶

¹⁶ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”¹⁷ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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 vulnerability to coercion from the government, terrorist organizations, or other groups.¹⁸

Applicant has close family ties in Jordan, the West Bank, and Saudi Arabia. Her parents are citizens of Jordan and reside in both Jordan and the West Bank. She has two sisters and a brother who are citizens of Jordan and reside in the West Bank. She has a brother who is a citizen of Jordan and resident of Saudi Arabia. Considering the terrorist threats that exist in Jordan, the West Bank and Saudi Arabia and human rights concerns in Jordan and Saudi Arabia, Applicant’s close family members in those places create a heightened risk of foreign inducement, manipulation, pressure, or coercion. Her family contacts in Jordan, the West Bank, and Saudi Arabia could also create a potential conflict of interest with her obligation to protect sensitive information. I find that AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 provides conditions that could mitigate foreign influence security concerns. Three are potentially applicable in this case.

(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; 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.

No evidence has been presented to show that Applicant’s relatives in Jordan, the West Bank, and Saudi Arabia work for any of those governmental entities. Nevertheless, because the risk of terrorism against her immediate family members

¹⁷ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

¹⁸ See *generally*, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided.)

could place Applicant in a position of having to choose between the interests of those family members and the interests of the United States, AG ¶ 8 (a) does not apply to her immediately family members.

Sixteen years ago, Applicant came to the United States at the age of 20. She became a U.S. citizen in 2003. She met and married her husband in the United States. Her husband has no contacts or interests in Jordan, the West Bank, or Saudi Arabia. Her husband and all of her children are U.S. citizens. Her children speak only English. Her professional future and all of her property interests, including her home, are in the United States. She is actively involved in the local community. She has submitted paperwork to renounce her Jordanian citizenship and for her parents to immigrate to the United States. Based on Applicant's deep and longstanding relationships and loyalties in the United States, she can be expected to resolve any conflict of interest in favor of the United States. AG 8(b) is applicable to all of Applicant's foreign contacts and interests.

Applicant's contact and communication with her uncle is casual and infrequent. She last communicated with him in 2009. Such casual and infrequent contact is unlikely to create a risk of foreign influence or exploitation. AG 8(c) is applicable to her contact with her uncle. Applicant's Jordanian friend is now a resident of the United States. Considering the present residence of her friend, it is unlikely Applicant would be placed into a position of having to choose between the interests of her friend and the interests of the United States. AG 8(a) is applicable to the relationship with her friend.

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 relevant 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. Applicant has developed deep roots in the United States. Her friends attest to her reliability, trustworthiness, and high moral character. One reference letter refers to her as “a pillar in the community.” Since becoming a U.S. citizen, Applicant has only used her U.S. passport to travel overseas. She has taken steps to renounce her Jordanian citizenship and to have her parents immigrate to the United States. Whatever potential conflicts that may arise from her having family members in Jordan, the West Bank, and Saudi Arabia are more than counterbalanced by her interests, responsibilities, and loyalties in the United States. Overall, the record evidence leaves me with no questions or doubts about Applicant’s eligibility and suitability for a security clearance. Considering all the evidence, I conclude Applicant has mitigated the security concerns arising under the guideline for Foreign Influence.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	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.

James F. Duffy
Administrative Judge