



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-01872
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

May 25, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant, a naturalized United States citizen originally from the Israeli-occupied West Bank, mitigated the foreign preference security concern, but failed to mitigate the foreign influence security concern. Clearance is denied.

Statement of the Case

On August 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C, foreign preference, and B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant's answer to the SOR was received by DOHA on August 13, 2010. He admitted all of the allegations, and requested a clearance decision based on the written

record instead of a hearing. On October 14, 2010, Department Counsel prepared a File of Relevant Material (FORM) setting forth the Government's case. Applicant received a copy of FORM on October 20, 2010, and did not submit a response. The case was assigned to me on December 9, 2010.

The FORM contain seven evidentiary documents referenced as Items 1 through 7. Also, it includes five documents, of which Department Counsel requested I take administrative notice, setting forth facts about the Israeli-occupied territories. I have taken administrative notice of the facts set forth in these documents and will refer to them using Roman numerals.

Findings of Fact

Applicant is a 38-year-old married man with two children. (Item 4 at 2) He and his wife have been married since 2001. (Item 5) A previous marriage ended in divorce in 1998. Both Applicant's ex-wife and his current wife are U.S. citizens.

Applicant earned a bachelor of science degree in biomedical engineering in 1994. Since 2004, he has worked for a defense contractor. Currently, he is a senior engineer.

Applicant was born in the West Bank, an area that was then part of Jordan, and is now part of the Israeli-occupied territory under the governance of the Palestinian Authority. (Items 5 and 6) Applicant immigrated to the United States in 1989 to attend college. After graduating, he took a job in the United States and married his first wife. (Item 6 at 1) Applicant did not originally intend to stay in the United States after graduation, but increasingly began to appreciate the freedom and liberties afforded to U.S. residents. Subsequently, he initiated the citizenship application process and he became a naturalized U.S. citizen in 2000. (Item 6 at 4)

Applicant has several family members who live in the West Bank, including his father, two brothers, a sister, two step-siblings, and his stepmother. He also has a stepbrother who lives in the United States. They are citizens of Jordan. Applicant values his family over his job. (Item 6 at 6)

Applicant's father is a physician. He speaks with him approximately once per week. (Item 6 at 6) Applicant's mother died in October 2002. Applicant's father's second wife is his late wife's sister. She is a homemaker. Applicant only talks to her if he calls for his father and she happens to answer the phone.

One of Applicant's brothers is a professor at a university in the West Bank. He went to college with Applicant in the United States. While in college, they were roommates. (Item 6 at 7) Unlike Applicant, he returned to the West Bank after graduating. Applicant talks to him approximately once per week.

Applicant's other brother is a naturalized U.S. citizen living in West Bank. He also went to college with Applicant, and is currently a fuel company executive. (Item 6 at 7-8) Applicant talks to him approximately once per week.

Applicant's sister is a dual U.S./Jordanian citizen. She works for a non-governmental organization and splits her time between the United States and the West Bank. Her home address is in the United States. (Item 6 at 8)

One of Applicant's stepsisters works for a telecommunications company in the West Bank. Applicant has spoken to her twice since 1989. There is no record evidence of Applicant's other stepsister's profession. Applicant is unsure of her exact address, and has seen her once or twice over the past 20 years. (Item 6 at 9)

Applicant's stepbrother is a doctor. He attended college and medical school in the United States, and currently lives in the United States. (Item 6 at 12) Applicant talks with him approximately once per month.

As of January 2010, Applicant possessed a valid passport issued by the Palestinian Authority. (Item 7 at 2) He has renewed it three times after becoming a U.S. citizen, using it twice to travel to the West Bank. (Item 4 at 2) Applicant used the Palestinian Authority passport because Israel requires visitors to the Palestinian territories who are non-residents to apply for a visa with Israel. This process typically takes a week, and Israel does not always approve the visa request. (Item 7 at 3)

Applicant's first trip during this period occurred in October 2002 when he attended his mother's funeral. He entered the West Bank through Jordan. (*Id.*) Applicant "did not have the luxury of waiting for an unguaranteed visa from the Israeli embassy while trying to make it to [his] mother's funeral which was on the same day that [he] arrived from Jordan." (*Id.*)

Applicant's second trip to the West Bank since becoming a U.S. citizen occurred in 2008. While there, he visited his family. (*Id.* at 10) He surrendered his Palestinian Authority passport to his employer on February 15, 2010. (Item 7)

Before becoming a naturalized U.S. citizen, Applicant travelled to the West Bank in 1993, 1996, and 1996. Applicant has never voted in a Palestinian Authority election, nor does he own property in any land governed by the Palestinian Authority. (Item 6 at 6) Applicant is highly appreciative of "the rights and freedoms allowed to [him] as a U.S. citizen because of [his] prior experience in a country where these same freedoms [were] not guaranteed. (Item 4 at 2)

The current security situation in the Palestinian Territories is such that the United States urges citizens to exercise caution when travelling to the West Bank, as armed militants and terrorist organizations are still active in some areas and demonstrations and violent incidents can occur without warning. (Item IV) U.S. citizens have been injured or killed by terrorists while in the West Bank and Gaza, and travel to the Gaza

Strip by U.S. government personnel is prohibited. (Item II at 6) In areas controlled by the Palestinian authority, there have been reports of torture, arbitrary and prolonged detention, poor prison conditions, and corruption. (Item IV at 29)

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is an evaluation 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."

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline C, Foreign Preference

Under this guideline, "when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." (AG ¶ 9) Applicant's use of a passport issued by the Palestinian Authority on two occasions to travel to the West Bank triggers the application of AG ¶ 10(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."

Applicant's contention that he used his Palestinian Authority-issued passport to expedite travel to the West Bank and circumvent the Israeli process for applying for visas has little probative value. As the Appeal Board noted, "[t]he negative security significance of acts indicative of foreign preference is not negated or diminished merely

because an applicant engages in those acts for personal reasons or for personal convenience.” (ISCR Case No. 99-0254 at 3 (Feb. 6, 2000))

Nevertheless, Applicant has surrendered his foreign passport. AG ¶ 11(e), the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” applies.

Guideline B, Foreign Influence

Under this guideline, “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” (AG ¶ 6).

Applicant has several family members living in the West Bank, a territory controlled by the Palestinian Authority that is characterized by rampant violence, corruption, internal strife, and terrorism. AG ¶ 7(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,” applies.

The following mitigating conditions under AG ¶ 8 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.,

(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.

Applicant is not close to either his stepmother or step-siblings living in the West Bank. AG ¶ 8(c) applies to these relationships.

Applicant has lived in the United States for his entire adult life. He attended college in the United States, and his wife and children are U.S. citizens. In the 22 years

he has lived in the United States, he has only visited the West Bank five times. Conversely, Applicant values his family more than his job. Under these circumstances, neither AG ¶ 8(a) nor AG ¶ 8(b) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Applicant's explanation for using his Palestinian Authority passport to visit relatives in the West Bank does not mitigate the foreign preference security concern. On balance, however, because of the length of time Applicant has lived in the United States, his appreciation for the rights afforded to him as a U.S. citizen, and the fact he turned in his foreign passport, I conclude the foreign preference security concern is mitigated.

Given the West Bank's instability and its significant terrorist presence, Applicant's longstanding relationships in the U.S., though significant, are insufficient to overcome the security risk generated by his relatives living in the West Bank. I conclude Applicant has mitigated the foreign preference security concern, but failed to mitigate the foreign influence security concern.

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 C:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant

Subparagraph 2.d - 2.e:

For Applicant

Subparagraph 2.f:

Against Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge