



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case: 10-02917
)
)
Applicant for Public Trust Position)

For Government: Caroline H. Jeffries, Esquire, Department Counsel
For Applicant: *Pro se*

February 16, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to ADP I/II/III sensitive information is granted.

On September 1, 2009, Applicant completed a Public Trust Position Application (SF 85P). On September 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 30, 2010, and requested a hearing before an administrative judge. On November 12, 2010, DOHA assigned the case to me and issued a Notice of Hearing setting the case for December 9, 2010. The

case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through D into evidence without objection. The record remained open until December 30, 2010, to give Applicant an opportunity to submit additional information. Applicant timely submitted two documents that I marked as AE E and F and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 19, 2010.

Procedural and Evidentiary Rulings

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Jordan. The request and the attached documents pertinent to Jordan are included in the record as Hearing Exhibit (HE) I, along with six attachments numbered I through VI. Those documents were admitted by stipulation. (Tr. 12.) The facts administratively noticed are limited to matters of general knowledge and pertinent to Jordan, and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations contained in SOR ¶ 1 and ¶ 2, and provided information in support of his answers.

Applicant is 40 years old. He was born in Jordan. He went to high school there. In June 1993, he earned a bachelor's degree in computer science from a Jordanian university. After graduation, he worked for the Jordanian airline company until 1998 when he immigrated to the United States and began working for a U.S. company as a program analyst. In August 2002, he started a position as an information analyst with another company. In September 2009, he obtained his current position with a federal contractor. He is a senior program analyst. He became a permanent U.S. registered alien in 2003 and a naturalized U.S. citizen in October 2008. He obtained a U.S. passport in November 2008. (Tr. 41-42.)

Applicant's wife was born in Jordan. They were married in Jordan, before immigrating to the United States in 1998. She became a naturalized U.S. citizen in October 2008. She is an architect/engineer. She traveled to Jordan in August 2010. He does not know if his wife's Jordanian passport is valid. (Tr. 50.) They have two children, ages six and ten, both born in the United States. They have U.S. passports.

Applicant does not own any property or assets in Jordan. (Tr. 26-27.) He and his wife have bank accounts and retirement funds in the United States. (Tr. 27.) They rent a house and would like to build a home here in the future. They are involved in their children's school activities (Tr. 28.)

Applicant's parents were born in Jordan. His father retired from the military before he died 14 years ago. His elderly mother is a citizen and resident of Jordan. She

was a homemaker while he was growing up. He speaks to his mother every couple days. (Tr. 37.) She and one of his sisters visited him in the United States sometime ago. The only reason he visits Jordan is to see his mother. He is helping her immigrate to the United States. (Tr. 57.) If she moves to the United States, he will not have any reason to return to Jordan. (Tr. 40.)

Applicant is one of five children, all born in Jordan. His three sisters are citizens and residents of Jordan. They are housewives and their husbands are in business. (Tr. 32.) He does not know his brothers-in-law very well because his sisters married after he left Jordan. (Tr. 33.) He speaks to his sisters if they are at his mother's home when he telephones. They live an hour away from her. (Tr. 37.) His brother is a resident of Oman. He is married and has three children. He works as an engineer. (Tr. 33.) He speaks to his brother occasionally. (Tr. 37.)

Applicant's in-laws are citizens and residents of Jordan. They are retired. (GE 2.) His father-in-law graduated from a U.S. university. Applicant does not know his occupation. (Tr. 35.) His in-laws spend time between Jordan and Canada. They are becoming Canadian citizens. He does not think that his wife speaks with her parents very frequently. (Tr. 51.) They visited Applicant in either 2003 or 2006. (Tr. 38.) Applicant's wife has one brother and four sisters. Her brother and three sisters reside in Canada. (Tr. 36-37.) One sister resides in Egypt. (Tr. 36.)

Applicant traveled to Jordan to visit his family in 2003, 2004, 2005, 2006, 2007, 2008, and September 2009. He usually visits two to three weeks and stays with his mother. (Tr. 39.) Upon his arrival in Jordan in September 2009, an immigration officer asked if he had a Jordanian passport. Applicant had his expired passport with him because it was in a passport bag amongst his children's U.S. passports. (Tr. 43, 49, 50.) The officer stamped the expired passport and told Applicant that he would need to renew it in order to leave the country. Applicant had no intention to renew the passport. It is valid until September 2014. (AE F.) He has no plans to take the passport with him again. (Tr. 46.) He did not know that it was necessary for him to destroy it for employment purposes. (Tr. 48.) During a March 2010 interview with a government investigator, he expressed his willingness to relinquish his Jordanian passport and citizenship. (GE 2.) During the hearing, he renounced his Jordanian citizenship. He volunteered to destroy the Jordanian passport. (Tr. 49.) On December 14, 2010, Applicant's security office verified that he had destroyed the passport. (AE F.)

Applicant expressed his loyalty to the United States. He considers himself an American citizen and not a Jordanian citizen. (Tr. 49.) The United States is his home. (Tr. 29.) He submitted two documents certifying that in 2010 he completed business courses required by his employer. (AE A.)

Jordan¹

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 United States for six decades. It is an ally of the United States in the war on terror.

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, association, and movement. Torture by the police and security forces is widespread.

Jordanian law allows any male relative to prevent a woman or child from leaving Jordan, even if they are U.S. citizens. Dual citizens are subject to certain obligations, including mandatory military service for males less than 37 years. Jordan treats dual citizens as Jordanian citizens under the law and it may not inform the U.S. embassy if a dual Jordanian-American citizen experiences problems while in Jordan.

The threat of terrorism in Jordan is high and westerners are specifically targeted. Al-Qaida focuses terrorist activities against both the U.S. and Jordan. Specifically, Al-Qaida claimed responsibility for the bombings of three hotels in Jordan, a rocket attack targeting a U.S. naval ship, and the assassination of an American diplomat. Jordan's State Security Court convicted and sentenced three individuals, first to death, but then commuted the sentences to 15 years each, for plotting to assassinate President George W. Bush, during his November 2006 trip to Jordan.

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead,

¹ HE I.

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 [sensitive] 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person who applies for access to sensitive information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order 10865 provides that "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, and then he or she may be prone

to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes two conditions that could raise a security concern and may be disqualifying:

(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.

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant was born in Jordan. He arrived in the United States in 1998 and became a naturalized U.S. citizen in October 2008. He obtained a U.S. passport in November 2008. In September 2009, he used his expired Jordanian passport to enter Jordan, resulting in the necessity that he renew it in order to exit the country. He possessed that passport until December 14, 2010, when it was destroyed. The Government produced substantial evidence of the above two disqualifying conditions and the burden shifted to Applicant to rebut, explain, extenuate, or mitigate these facts and resulting security concerns.

AG ¶ 11 provides three conditions that could mitigate said security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(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's Jordanian citizenship was based on his parents' citizenship and his birth in Jordan. Applicant expressed a willingness to renounce his Jordanian citizenship and destroy his passport before and during the hearing. In December 2010, he surrendered his Jordanian passport to his employer, who destroyed it. Accordingly, the above mitigating conditions apply to the security concerns that were raised.

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:

(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;² 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.

Since leaving Jordan in 1998, Applicant has maintained contact with his mother, three sisters, and parents-in-law, who are citizens and residents of Jordan, a close and long-term ally of the United States. Jordan works closely with the United States on many matters and shares common strategic interests. But it also continues to have some human rights issues, has been victimized by terrorist attacks, and has terrorists' organizations operating in the country, which target the United States for intelligence collection through human espionage and other means. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. None of Applicant's family has connections with the Jordanian government or have positions in which they could otherwise benefit from his access to sensitive information or technology. However, under either disqualifying condition, a potential conflict of interest could arise for Applicant and his security obligations in a situation wherein his family

² The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

members were taken hostage or otherwise threatened with harm if he did not cooperate with terrorists or their governments. AG ¶¶ 7(a) and (b) have been raised by the evidence.

AG ¶ 8 provides three conditions that could mitigate the above security concerns:

(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.

None of Applicant's family members residing in Jordan are in positions or activities in which they could benefit from obtaining sensitive information from the United States. While their physical presence in Jordan could create a potential conflict for Applicant, requiring him to choose between safeguarding their interests versus those of the United States, Jordan's pro-Western foreign policy for over six decades diminishes the likelihood of that happening. In addition, Jordan has been an important and strategic partner with the United States in the war on terror over those years. AG ¶ 8(a) has some application.

Based on his relationships in, and depth of loyalty to, the United States, Applicant can be expected to resolve any conflict of interest in favor of the United States. He has lived in the United States since 1998 and became a naturalized U.S. citizen in 2008. He has worked for U.S. companies since 1998 when he arrived in the United States. His wife is a naturalized U.S. citizen, residing here. His two children were born in the United States. He and his wife are active in their children's activities. They have bank accounts here and intentions to build a home. He does not have financial interests in Jordan. There is no evidence that he has connections or contact with any people in Jordan other than his immediate family members, in particular his mother. He considers himself an "American." Because Applicant has been a U.S. citizen for just over two years at the time of the hearing, AG ¶ 8(b) is not fully applicable.

Applicant maintains ongoing communication with his mother, and occasionally with his sisters. He visited his family seven times since leaving Jordan in 1998. Hence,

AG ¶ 8(c) cannot apply, as those contacts have been sufficiently frequent and not casual over the years.

Whole-Person Concept

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

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must include an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Three circumstances weigh against Applicant in the whole-person analysis. First, there is a risk of terrorism and human rights abuses in Jordan. More importantly for security purposes, terrorists in the country are hostile to the United States and actively seek sensitive information. Terrorists could attempt to use Applicant's mother, three sisters, and in-laws to obtain such information. Second, he had numerous connections to Jordan before he immigrated to the United States in 1998. Following his birth, he spent his formative years there. He was educated at a Jordanian university and after graduation worked for a Jordanian company. Third, since leaving Jordan in 1998, he visited his family in Jordan in 2003, 2004, 2005, 2006, 2007, 2008, and 2009. He carried his expired Jordanian passport with him for his last trip, resulting in its renewal after he obtained U.S. citizenship and passport.

Substantial mitigating evidence weighs in favor of granting Applicant access to sensitive information. He is a mature person, who has lived in the United States for 12 years and has been a naturalized citizen since 2008. His wife has lived here with him during that time and became a U.S. citizen at the same time he did. His children were born here. He has successfully worked for U.S. companies for the past 12 years. When

his mother moves to the United States, he will not travel to Jordan. His in-laws spend time in Canada and are applying for Canadian citizenship. He willingly renounced his Jordanian citizenship and credibly asserted his allegiance to the United States. His Jordanian passport was destroyed and he does not intend to renew it. There is no derogatory information about him in the record.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness concerns arising under the guidelines for foreign preference and foreign influence. Overall, the record evidence leaves no doubt as to Applicant's present eligibility and suitability for a public trust position.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.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 public trust position. Eligibility for access to ADPI/II/III is granted.

SHARI DAM
Administrative Judge