



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 10-04104
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline B (foreign influence). Clearance is granted.

Statement of the Case

On July 15, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (foreign influence) for Applicant. 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 (AG) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on September 22, 2011. Department Counsel was prepared to proceed on November 17, 2011. The case was assigned to me on

November 29, 2011. DOHA issued a notice of hearing on December 2, 2011, scheduling the hearing for December 13, 2011. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. (transcript (Tr.) 14-16) Applicant offered Applicant Exhibits (AE) A through F, which were received into evidence without objection, and he testified on his own behalf. DOHA received the hearing transcript on December 21, 2011. I held the record open until December 23, 2011, to allow Applicant to submit post-hearing documentation. (Tr. 92, 98) After the hearing, Applicant provided six exhibits, which were admitted without objection. (AE G-L)

Procedural and Evidentiary Rulings

Waiver of 15-day notice requirement

Directive ¶ E3.1.8 states that an “applicant shall be notified at least 15 days in advance of the time and place of the hearing . . .” The Directive does not specify the form that notice must take. Although the 15-day notice requirement is important, the Board has previously noted that an applicant may waive that requirement. See ISCR Case No. 04-12732 at 8 (App. Bd. Nov. 2, 2006). Applicant was advised of the 15-day notice requirement, and he stated he was willing to waive it and proceed with the hearing. (Tr. 7-8) In this case, Applicant has knowingly waived the notice requirement. See ADP Case No. 05-12037 at 2-3 (App. Bd. May 10, 2007)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Jordan contained in Ex. I(1-5). Without objection from Applicant, I took administrative notice of the documents offered by Department Counsel, which pertain to Jordan. (Tr. 88-90)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Jordan were derived from Ex. I(1-5) as indicated under subheading “Jordan” of this decision, *infra*.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1a – 1e and provided explanations. His admissions are incorporated as findings of fact.

Background Information

Applicant is a 39-year-old Arabic linguist, who is employed by a defense contractor and has been deployed overseas for about 30 months. (Tr. 32, 41, 65) He sold real estate and managed a gas station convenience store before obtaining employment as a linguist. (Tr. 45, 69) Before deploying, he successfully completed his counterintelligence (CI) screening. (Tr. 42, 64-65) He earns about \$110,000 per year as a linguist. He seeks a secret security clearance, which is a condition of his continued employment. (Tr. 42)

Applicant was born and raised in Kuwait; however, he is a Jordanian citizen because of the citizenship of his parents. (Tr. 17, 32-34) In 1990 or 1991, Applicant's family moved to Jordan from Kuwait because of the Iraqi invasion. (Tr. 33-35, 49-54) In 1991, Applicant came to the United States from Jordan, when he was 19 years old. (Tr. 27, 32, 53-56) He married his spouse in 1992. (Tr. 27) She is a U.S. born citizen. (Tr. 28, 41) They have an eight-year-old son, who lives with his parents in the United States. (Tr. 31, 61)

Applicant's parents and two brothers are citizens and residents of Jordan. (SOR ¶¶ 1a and 1d; SOR response; Tr. 18-23) His father is a general construction contractor, and his mother works in their home. (Tr. 18-20) His parents and two brothers and sister are living in Jordan, and they do not work for the Jordanian Government. (Tr. 17-24)

One brother and his sister are citizens of Jordan and permanent residents of the United States. (SOR ¶¶ 1b and 1e; SOR response; Tr. 24-26) Their spouses are U.S. citizens. (Tr. 25-26)

Another brother is a citizen of Jordan and a resident of another Middle Eastern country. (SOR ¶ 1c; SOR response; Tr. 29) A private company employs him. (Tr. 29-30)

Applicant's most recent communication with his father was about a year ago, and he communicated with his mother about six months ago. (Tr. 35) His communication with his brothers in Jordan is less frequent because he does not have their phone numbers. (Tr. 35-36) He does not have an emotional connection to his brothers and sister living in Jordan because of a significant age disparity between himself and those siblings, and he has been living in the United States for 20 years. (Tr. 38) Applicant is not close to any of his siblings because they have grown apart over the years and their communications are infrequent. (Tr. 39)

In the last 20 years, Applicant has seen his parents about two or three times. (Tr. 37) His most recent visit to his parents and to Jordan was in 2002. (Tr. 20-21, 37) He stayed in Jordan two or three months and lived with his parents. (Tr. 62-63) About every eight months, Applicant sends his parents about \$200. (Tr. 39-40, 59-61) They are not dependent on the funds he provides. (Tr. 40)

Applicant owns a home in the United States, and his bank accounts are in the United States. (Tr. 44) He does not have any property in Jordan. (Tr. 44)

Character Evidence

One character witness who has met Applicant's family, served with Applicant, and supervised him at his overseas location for about 100 days, described him as pleasant, cooperative, and friendly. (Tr. 71-82) He is competent, professional, diligent, an asset to his organization, and an excellent family man. (Tr. 77-81)

Another character witness who served with Applicant and supervised him at his overseas location for about six months in 2011 described him as honest, kind, cooperative, and friendly. (Tr. 83-86) He is stable and a great person to be around in an environment such as they were in. (Tr. 86-87) He is one of the best and most accurate translators out of the group of 30 translators. (Tr. 80-81, 87-88)

Several other supervisors praised Applicant's diligence, professionalism, integrity, and trustworthiness. (AE B, C) He provided three certificates of appreciation or commendation for his tireless efforts as a linguist supporting the mission at his overseas location. (AE D, E, F)

On December 5, 2011, a senior military officer wrote that Applicant is a "true professional who provided superb linguist support to my command. He is definitely a tremendous part of the team and serves as a major asset to our Military." (AE A)

Jordan¹

Jordan is a small country located in the Middle East with a constitutional monarchy and a developing economy. Jordan is ruled by King Abdullah II, has a Council of Ministers selected by the King, and has a partially elected bicameral National Assembly. Jordan has followed a pro-Western foreign policy and has had close relations with the United States for six decades.

The U.S. State Department notes that Jordan's human rights record continues to reflect some problems. Problems include: torture, arbitrary arrest, prolonged detention, poor prison conditions, denial of due process, infringement on citizens' privacy rights, and restrictions on freedom of speech, press, assembly, and

¹ This section was taken in whole or in part from Ex. I(1-5)

association. The United Nations reports that torture by police and security forces is widespread based on consistent and credible allegations.

Jordanian law allows any adult male relative to prevent a woman or child from leaving Jordan, even if the woman or child only holds U.S. citizenship. Jordanian law applies to dual Jordanian-American citizens. Jordanian law subjects dual citizens to certain obligations, for example, males under the age of 37 are required to register for service in the Jordanian military. Overall, Jordan treats dual citizens as Jordanian citizens under law and may not inform the U.S. embassy if a dual Jordanian-American citizen has a problem in Jordan.

Despite Jordan's aggressive pursuit of terrorists, drafting of counter-terrorism legislation, prosecution of terrorism cases, including both Al-Qaida and non-Al-Qaida defendants, and investigation and disruption of terrorist plots, the threat of terrorism remains high in Jordan. Terrorists in Jordan often do not distinguish between U.S. government personnel and private citizens and specifically target areas frequented by Westerners.

In recent years, the Jordanian security forces disrupted numerous terrorist plots against U.S. interests. Transnational terrorist groups and local terrorist groups pose threats in Jordan. Specifically, Al-Qaida continues to focus terrorist activities against both the U.S. and Jordan. Al-Qaida claims responsibility for the November 2005 bombings of three hotels in Amman, a rocket attack in August 2005, and the assassination of an American diplomat in 2002. Jordan's State Security Court convicted and sentenced three individuals, first to death, but then commuted the sentences to confinement for 15 years each, for plotting to assassinate President Bush during his November 2006 trip to Jordan.

Terrorist organizations currently target the United States for intelligence collection through human espionage and by other means. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

Relations between the United States and Jordan have been close for six decades, with 2009 marking the 60th anniversary of U.S.–Jordanian ties. A primary objective of U.S. policy has been the achievement of a comprehensive, just and lasting peace in the Middle East. U.S. policy seeks to reinforce Jordan's commitment to peace, stability, and moderation. The peace process and Jordan's opposition to terrorism parallel and indirectly assist wider U.S. interests. Accordingly, through economic and military assistance and through close political cooperation, the United States has helped Jordan maintain its stability and prosperity.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v.*

Egan, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline B (foreign influence).

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 lists two conditions that 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; 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.

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). Applicant has periodic contacts with his parents, who are citizens and residents of Jordan. He also provides about \$600 per year to them. These close relationships with his relatives

create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant does not have a sufficiently close relationship with any of his siblings living outside the United States to establish disqualifying conditions under Guideline B. His contact with them is infrequent, and he has not visited Jordan or seen them for ten years.

The Government produced substantial evidence of these two disqualifying conditions as a result of Applicant's parents living in Jordan, his contact with them, his travel to Jordan in 2002, his lengthy stay with them in 2002, and his periodic payments of a small amount of money each year. The burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Two Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(a) partially applies. Applicant's family members living in Jordan are not associated with or connected with the Jordanian government. Jordan is a close ally of the United States. Jordan is therefore less likely to seek to exploit Applicant's family members living in Jordan. On the other hand, Applicant has emotional ties with his parents living in Jordan as evidenced by his contact with them, his lengthy visit to their residence Jordan in 2002, and his periodic payments to them. With regard to his parents currently living in Jordan, Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his parents] and the interests of the U.S." His frequent contacts with his parents in Jordan could potentially force him to choose between the United States and Jordan. On balance, he did not fully meet his burden of showing there is "little likelihood that [his relationship with his parents living in Jordan] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. Applicant is a naturalized U.S. citizen, lived in the United States since the age of 19 (more than half of his life), married a native-born U.S. citizen, and served as an Arabic linguist for the U.S. armed forces for 30 months. He successfully held security clearance during his term of employment as a defense

contractor. He successfully completed CI screening and is currently serving as an Arabic linguist. Applicant's spouse, only child, and two siblings are U.S. citizens and reside in the United States. Most notably, Applicant has sacrificed by serving in an overseas location.

Appellant has developed a sufficient relationship and loyalty to the United States, that he can be expected to resolve any conflict of interest in favor of the U.S. interest. All of his assets are in the United States. Applicant has been employed by a defense contractor and is very highly regarded at work. Applicant's contacts and linkage to the U.S. are much greater than his linkage to Jordan. He is heavily vested in the United States -- financially and emotionally.

Whole-Person Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole-person concept under Directive ¶ E2.2.1. "Under the whole-person concept, the administrative judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."²

The directive lists nine adjudicative process factors (APF) which are used for "whole-person" analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.³ In addition to the eighth APF, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." Directive ¶ E2.2.1. Ultimately, the clearance decision is "an overall commonsense determination." Directive ¶ E2.2(c).

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's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within

² ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

³ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole-person analysis in foreign influence cases).

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).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. I have carefully considered Applicant’s family connections and personal connections to Jordan. Applicant’s parents living in Jordan, his contact with them, his travel to Jordan in 2002, his lengthy stay with them in 2002, and his periodic payments to them of about \$600 per year raise important security concerns. The terrorist threat in Jordan is real and ongoing. Terrorists can be just as effective at exploiting family members for intelligence as government intelligence agencies. However, his siblings living in Jordan do not raise a security concern because his contact with them is infrequent.

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant is a naturalized U.S. citizen, who has lived in the United States since he was 19 years old, or alternatively stated, he has lived in the United States for more than 20 years, except when he has been serving overseas on behalf of the Department of Defense. His spouse and only child are U.S.-born citizens residing in the United States.

Most compelling, however, is the fact that Applicant loyally and competently served as an Arabic linguist for 30 months at an overseas location, and he is currently serving as an Arabic linguist at that location. During his service with defense contractors, he has successfully held security clearances and has repeatedly proven himself. A senior military officer recently lauded Applicant as a “true professional who provided superb linguist support to my command. He is definitely a tremendous part of the team and serves as a major asset to our Military.” (AE A)

Applicant is financially vested in the United States as a home owner and owner of bank accounts with no financial ties to Jordan. His spouse and child are in the United States, and he maintains a close relationship with them. In short, Applicant’s life is predominantly U.S.-based. His ties to the United States are clearly stronger than his ties to Jordan. There is no evidence that he has ever taken any action which could cause potential harm to the United States.

Applicant’s present employers have considerable trust in him. His personal and work-related references assess Applicant as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. He has an excellent reputation as a friend, family member, employee, and U.S. citizen. His evidence supports him for a security clearance. There is no derogatory record information about him. Lastly, Jordan has supported the U.S. war against terrorism and is a country that has been and continues to be friendly with the U.S. for more than 50 years.

This case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This analysis must answer the question whether there is a legitimate concern

under the facts presented that the Jordanian government, its agents, or lawless elements such as terrorists might exploit or attempt to exploit Applicant's parents in such a way that this U.S. citizen would have to choose between his pledged loyalty to the United States and those family members. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole-person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors"⁴ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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 1a – 1e: For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuidier
Administrative Judge

⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).