



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-01209
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: James S. DelSordo, Esq.

February 13, 2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is a naturalized U.S. citizen originally from Jordan. Although Applicant has several relatives who are citizens and residents of Jordan, his life is firmly rooted in the United States. Accordingly, he is expected to resolve any conflict of interest in favor of the United States. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaces the guidelines in Enclosure 2 to the Directive.

Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the reasons for the action under Guideline B (foreign influence).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on October 24, 2011. The hearing proceeded as scheduled on December 13, 2011. At the hearing, Government's Exhibits (GE) 1 through 3 were admitted without objection. Applicant testified and presented the testimony of one witness. I received the transcript (Tr.) on December 21, 2011.

Request for Administrative Notice

Without objection from Applicant, I granted Department Counsel's written request that I take administrative notice of certain facts about Jordan. The request has been included in the record as Hearing Exhibit (HE) 1. The pertinent facts are set out below.

Findings of Fact

Applicant is a 30-year-old employee of a federal contractor. He emigrated from Jordan in 1999, at age 17, with his parents and younger brother. He became a naturalized U.S. citizen in 2004. He earned his bachelor's degree from a U.S. university in 2006. Applicant married his wife, who is also a naturalized U.S. citizen from Jordan, in 2007. They have no children and have owned their home since 2008.²

Applicant has eight siblings. Two of his brothers are naturalized U.S. citizens residing in the United States. His oldest brother works as a federal contractor and holds a security clearance. His parents are permanent U.S. residents, who split their time between the United States and Jordan. When they are residing in the United States they live with Applicant. While in Jordan, Applicant's parents live in the home they own there. His father is retired and his mother has never worked outside the home. Applicant and his two U.S.-citizen brothers provide financial support to their parents, as needed, to supplement the rental income they receive from renting portions of their Jordanian home. Applicant's six other siblings are residents and citizens of Jordan. None of Applicant's family members are connected to or dependent on the Jordanian government. Both of his sisters are housewives. Two of Applicant's four brothers operate a shop together. One brother works in construction, the other is a taxi driver. He does not provide any financial support to his siblings. Applicant maintains contact with his siblings in Jordan by telephone a few times each year. He has not seen them since his last trip to Jordan in 2004, prior to his naturalization.³

Although Applicant considers himself a dual citizen of both countries, he surrendered his Jordanian passport to his security officer in early 2011. The passport

² Tr. 24-25, 36-38, 40-47; GE 1.

³ Tr. 30, 32-36, 43-47.

has been destroyed. Because he has not left the country since becoming naturalized, Applicant does not have a U.S. passport.⁴

Jordan⁵

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. Jordan has followed a pro-western foreign policy and has had close relations with the United States for more than six decades. The Jordanian government respects human rights in some areas, but its overall record continues to reflect some problems including torture, arbitrary arrest, prolonged detention, denial of due process, infringement on citizen's privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement.

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 terror plots, the threat of terrorism remains high. Al-Qaida has focused terrorist activities against Jordan and U.S. interests in Jordan. Terrorist organizations have targeted the United States for intelligence through human espionage and by other means. International terrorist groups have conducted intelligence operations as effectively as state intelligence services.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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.

⁴ Tr. 30-31, 42-43; GE 2-3.

⁵ HE 1.

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 security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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.

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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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.”⁶

AG ¶ 7 indicates the disqualifying conditions that are applicable 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.

Applicant has several family members who are residents and citizens of Jordan. His parents are citizens of Jordan and hold permanent resident status in the United States. They divide their time between both countries. Six of Applicant’s eight siblings

⁶ AG ¶ 6.

are citizens and residents of Jordan. The mere possession of close ties with family members living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁷ Applicant's ties to his parents and his siblings in Jordan create a heightened risk and give rise to a potential conflict of interest, which could put Applicant in the position of having to choose between protecting U.S. interests and his desire to help his foreign relatives.

The guideline also includes the following conditions that could mitigate the 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.; 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.

Both mitigating conditions apply. Family contacts and ties with persons in a foreign country are not automatically disqualifying, but require an applicant to present evidence in mitigation and extenuation that he qualifies for access to classified information. None of Applicant's family members in Jordan are associated with or dependent upon the government of that country. As such, it is unlikely that he will be put in the position of having to choose between the interests of his Jordanian relatives and the interest of the United States. Furthermore, Applicant has lived in the United States since he was 17 years old. He has not returned to his native country in almost eight years. He has developed significant relationships in the United States. Two of his siblings are citizens and residents of the United States. His parents reside with Applicant while they are in the United States. He is married and owns a home. His life is firmly rooted in the United States, not Jordan. Viewed in totality, these factors lead me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant has spent his adult life in the United States. The evidence supports a finding that Applicant does not have divided

⁷ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

loyalties between the United States and Jordan. This conclusion is reinforced by the facts that Applicant has not returned to Jordan since becoming a naturalized U.S. citizen and that he surrendered his Jordanian passport well in advance of the issuance of the SOR. Based on the evidence, I conclude that Applicant has mitigated the Guideline B concerns raised in this case.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a -1.b:	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.

Nichole L. Noel
Administrative Judge