



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



In the matter of:)
)
) ISCR Case No. 11-05726
)
Applicant for Security Clearance)

Appearances

For Government:
Tovah A. Minster, Esquire, Department Counsel
For Applicant: Joseph R. Price, Esquire

02/11/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 16 April 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C, Foreign Preference and B, Foreign Influence.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 27 July 2012, and I convened a hearing 31 August 2012. DOHA received the transcript 7 September 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-2, hearing exhibit (HE) 1, and Applicant exhibits (AE) A-C.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the allegations of the SOR, except for SOR 2.g, 2.i, and 2.j. He is a 41-year old senior international producer employed by a defense contractor since September 2010. He has not previously held a clearance.

Applicant was born in the United States in August 1971, the son of two citizens of the Kingdom of Saudi Arabia (KSA) who were attending college in the U.S. Under Saudi law, Applicant derived Saudi citizenship. When his parents finished their studies in 1973, the family returned to Saudi Arabia. Applicant was raised and educated in Saudi Arabia. He returned to the U.S. with his parents in at least 1978, traveling on a Saudi passport, the only passport on which he could leave and reenter the country.³ Applicant also traveled in the Middle East on a Saudi passport, both with his parents as a child and alone.

Applicant's passport records are not complete. His most recent U.S. passport was issued in October 2003 (GE 1). He remembers taking his expired baby passport and birth certificate to the U.S. Embassy in 1992 or 1993 to renew his U.S. passport (Tr. 102-103). He had not held a U.S. passport since his baby passport expired around 1978. Applicant was a baby when he got his first Saudi passport, and he remembers a picture of him in Egypt when he was about five years old (Tr 99-101). Applicant maintained his Saudi passport continuously until at least 1995, when he returned to the U.S. permanently. However, he renewed it to travel to Saudi Arabia to remarry his wife in 2000. Applicant's most recent Saudi passport was issued in April 2006. He used his Saudi passport in April 2005 or 2006 to travel to the KSA on business. He also used it in July 2007, after his wife had returned to Saudi Arabia to undergo surgery and experienced serious complications after the surgery. At the time of his October 2010 clearance application, Applicant had surrendered it to his company facility security officer (FSO), and it expired in February 2011.

Applicant's parents divorced when he was about 13 years old. They both remarried. Applicant has had very little contact with his father since the divorce, most recently a brief meeting in Saudi Arabia in 1995.

In October 1990, Applicant married a Saudi citizen in Saudi Arabia. They had two sons together, born in Saudi Arabia in August 1991 and March 1993. His sons derived U.S. citizenship through him. Applicant and his wife divorced in June 1995. However, they married again in December 2000, in Saudi Arabia. She returned to the U.S. with Applicant and lived with him until their separation in May 2010 and divorce in September 2011. While she was in the U.S., she became a U.S. citizen. The divorce was amicable, and their post-divorce relations remain "friendly, very cordial." (Tr 50) She works for the

³Applicant is not sure whether he left the U.S. in 1973 on his mother's Saudi passport (as an infant), or on his own U.S. or Saudi passport. U.S. passports for minor children are only valid for five years, so any U.S. passport would have been close to expiring when he returned to the U.S. in 1978. Nevertheless, he may have entered the U.S. on a U.S. passport in 1978.

Saudi embassy as a transcriber. They speak at least monthly, and whenever there are issues with the children to be dealt with.

Applicant began college in Saudi Arabia, but did not finish there. In 1995, Applicant returned to the U.S. with his sons to work and to study. In 1997, Applicant entered a KSA government-sponsored scholarship program. The program covered 100% of his undergraduate expenses (consisting of tuition, medical insurance, and a monthly living stipend) and 80% of his graduate school expenses. Applicant obtained his undergraduate degree in August 2003 and his graduate degree in August 2008. Applicant estimates he received about \$150,000 in direct and indirect support from the Saudi government. Applicant acknowledged that program participation technically requires recipients to return to Saudi Arabia and return the benefit of the education by working there. In practice, however, the requirement is never enforced because there are no jobs available for returning participants and the official unemployment rate is 21% (Tr. XX).

Applicant continues to receive medical insurance through the government-sponsored scholarship program because he serves as the required male sponsor for his sister and step-sister, who are in the U.S. attending college. Under Saudi law, no unmarried woman can leave Saudi Arabia without the approval of her family, and cannot reside in another country without a male sponsor. As his sisters' sponsor, Applicant is included on their medical insurance policy. Applicant estimates that the Saudi-sponsored medical insurance has covered about \$25,000 of his medical expenses. He would like to keep the coverage because it is free to him.

Applicant's parents, step-parents, brother, step-siblings and half-siblings, and ex-mother-in-law are resident citizens of Saudi Arabia. His ex-wife and two children are dual citizens of the U.S. and the KSA, residing in the U.S. His sister and half-sister are Saudi citizens living in the U.S. with Applicant. He serves as their sponsor for the Saudi scholarship program, but has also sponsored his sister for permanent resident status in the U.S. Applicant has close and continuing contacts with one friend who is a resident citizen of the KSA.

Applicant's contacts with his stepparents and step-siblings are virtually non-existent, and contacts with his mother-in-law evaporated with his divorce. And while Applicant asserts that he has little actual contact with his mother or brother, his sense of family connection or obligation is such that he would want to return to Saudi Arabia for either of their funerals, at a minimum. His limited contacts with his mother are more because he does not like being "mothered," in the manner of the Middle East, and less because of any actual estrangement.

Saudi Arabia is controlled by the Al Saud monarchy. The family rules through a king chosen by and from the family, who rules through royal decrees. However, Islamic law is the basis for the authority of the country's conservative customs and social practices. Consequently, any westernization embraced by the monarchy can be

severely constrained by the authority of the Muslim clerics, who wield considerable power in political realms.

The United States and Saudi Arabia share a common concern about regional security, oil exports and imports, and sustainable development. Despite generally good relations, however, the United States remains concerned about human rights conditions in Saudi Arabia, particularly regarding women. Further, U.S.-Saudi relations were strained after the September 2001 terrorist attacks. During 2003 and 2004, terrorists and suicide bombers kidnapped or killed Americans and attacked the U.S. consulate in Jeddah, killing five consulate employees.

A travel warning is in effect for Saudi Arabia due to concerns about potential terrorist activity directed against U.S. citizens and interests. Individuals and organizations based in Saudi Arabia have been designated by the U.S. Government as providing financial and material support to Al-Qaeda and other terrorist groups. Saudi and U.S. officials appear confident that Al-Qaeda's capability to launch attacks inside the Kingdom has been seriously degraded. The Saudi government continues to build its counter-terrorism capacity and efforts to counter extremist ideology. Since November 2009, Saudi officials have arrested hundreds of Al-Qaeda suspects accused of planning attacks against the government and oil installations, planning to poison Saudi officials and journalists, and planning to finance terror operations by robbing banks and companies. Saudi Arabia is not known to target its ex-patriate citizens to obtain sensitive information.

Applicant's character witnesses consider him honest and trustworthy and an excellent employee. They believe he is completely loyal to the U.S. and recommend him for his clearance. However, a reference who has known him since graduate school mistakenly believes that he grew up in the U.S.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case.

Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁴

Analysis

The Government established a case for disqualification under Guideline C by showing that Applicant received about \$150,000 in education benefits from the Saudi government while he was pursuing his undergraduate and graduate degrees in the U.S. He continues to receive Saudi government education benefits (in the form of medical insurance) because he serves as the required male sponsor for his sister and half-sister—Saudi nationals attending college in the U.S.⁵ He also renewed his Saudi passport several times after returning to the U.S., although he surrendered it to his FSO and it has since expired. He used it several times in preference to his U.S. passport to travel to Saudi Arabia. This conduct raises security concerns under the adjudication guideline for foreign preference, perhaps more accurately described as divided preference, which he failed to mitigate.

For Applicant’s conduct to fall within the security concerns of Guideline C, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Between 1997 and 2008, Applicant accepted \$150,000 of educational and related benefits available to him from the Saudi government. Applicant continues to experience the financial benefit of this entitlement program as his sister and step-sister are currently receiving the same benefit to pay for their educations. The negative security significance of acts indicative of a foreign preference is not negated or diminished merely because an applicant engages in those acts for personal reasons, or

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵AG ¶ 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. This included but is not limited to: (1) possession of a current foreign passport; (5) using foreign citizenship to protect financial . . . interests in another country; (7) voting in a foreign election; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

because those reasons may be quite sensible.⁶ Nor is the security significance of Applicant's exercise of his rights as a citizen of Saudi Arabia mitigated by any ignorance of negative security concerns raised by his accepting the educational assistance to which he was entitled. The absence of any sinister motive on Applicant's part does not negate or reduce the negative security significance of his conduct.⁷ Applicant has exercised his dual citizenship fluidly—not surprising given the circumstances under which he obtained his dual citizenship—and perhaps sensibly. In some respects, he is in a more difficult position than the U.S. citizen who obtains U.S. citizenship through naturalization because he did not choose U.S. citizenship in the usual sense and took no oath of allegiance to the U.S. as do naturalized citizens. Consequently, he has a harder time demonstrating that his preferences are not divided. Moreover, the fact that participants in the education program are technically obligated to return to Saudi Arabia and benefit the country through their contributions to society provides a potential avenue for undue influence.

Applicant's active exercise of dual citizenship after being born a U.S. citizen was done deliberately. His dual citizenship is not due solely his parents' citizenship.⁸ Although he stated a willingness to forego the medical benefits and to renounce his Saudi citizenship in the past, he demonstrates a palpable reluctance to do so, and has taken no action to renounce his Saudi citizenship.⁹ He has been a U.S. citizen since birth, and has exercised his dual citizenship simultaneously since. He exercised his Saudi citizenship as an adult,¹⁰ and the use of his foreign passport was not approved.¹¹ Although he surrendered his passport to his security office and understands the potential consequences to his clearance should he regain possession of it, that action is not enough to overcome the adverse concerns raised by his other conduct.¹² Indeed, it seems likely he would renew his Saudi passport if circumstances warranted. I resolve Guideline C against Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to

⁶ISCR Case No. 99-0295, at 6.

⁷ISCR Case No. 99-0511, at 9-10 (App. Bd. Dec. 19, 2000).

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

⁹¶ 11 (b) the individual has expressed a willingness to renounce dual citizenship;

¹⁰¶ 11 (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

¹¹¶ 11 (d) use of a foreign passport is approved by the cognizant security authority;

¹²¶ 11 (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.¹³ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.¹⁴ In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.¹⁵

In this case, the Government established that Applicant's contacts with his family in Saudi Arabia created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion.

Saudi Arabia and the U.S. generally enjoy good foreign relations, albeit tempered by U.S. concerns regarding human rights limitations, particularly regarding the status of women. Saudi Arabia does not appear to be an active collector of protected information, nor has it been demonstrated to target U.S. citizens to obtain protected information. Thus, Saudi Arabia's ability and willingness to target protected information is low.

Nevertheless, examining Applicant's circumstances, the Government also established that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's contacts with family in Saudi Arabia. Applicant has resided in the U.S. less than half his life, although most of his working life. His financial interests are all in the U.S. However, his contacts with his mother and brother, both of whom reside in Saudi Arabia, and ex-wife, who works for the Saudi embassy, remain problematic. I resolve Guideline B against Applicant.

Whole-person considerations require no different result. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is talented, hardworking, and possesses good character and integrity. However, this finding does not preclude a finding that Applicant's facts and circumstances still pose a security risk. Stated otherwise, the Government need not prove an applicant is a bad person before it can deny or revoke

¹³AG ¶ 6.

¹⁴AG ¶ 7 (a).

¹⁵AG ¶ 7 (e).

access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control—such as having close relatives who are citizens or residents of foreign countries.¹⁶

Formal Findings

Paragraph 1. Guideline C:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant
Paragraph 2. Guideline B:	AGAINST APPLICANT
Subparagraphs a, c-d, f, g-h:	Against Applicant
Subparagraphs b, e, i-j,	For Applicant

Conclusion

In view of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge

¹⁶ISCR Case No. 01-26893 at 8 (App. Bd. Oct. 16, 2002).