



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



In the matter of: )  
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 REDACTED ) ISCR Case No. 11-06050  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Phillip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2013  
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**Decision**  
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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Foreign Influence concerns raised by his foreign connections to Jordan and the West Bank. He has lived in the United States since he was a teenager. He has been educated in, worked his entire adult life in, and raised a family in the United States. He has worked for federal contractors since 1996 and has held a security clearance without issue for over ten years. He has promptly and conscientiously complied with all reporting requirements regarding his foreign connections and travel. Applicant established that he would resolve any potential conflict that might arise in favor of national security. Clearance is granted.

**Procedural History**

On April 25, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence). On May 23, 2012, Applicant answered the SOR and requested a hearing (Answer).

On October 24, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on October 31, 2012. After coordinating with the parties, I scheduled the hearing for November 28, 2012.<sup>1</sup>

At hearing, Department Counsel offered Government Exhibits (GE) 1 – 2, which were admitted without objection. Department Counsel also submitted several official unclassified documents regarding Jordan, Israel, and the occupied Palestinian territories of the West Bank and the Gaza Strip for administrative notice. These documents were marked Administrative Notice (AN) I – XII. Applicant appeared at the hearing, testified, and offered Applicant's Exhibits (AE) A – E, which were admitted without objection. The transcript (Tr.) was received on December 6, 2012.<sup>2</sup>

### **Findings of Fact**

Applicant is in his forties. He was born in Jordan, but immigrated to the United States when he was a teenager. He became a U.S. citizen over 20 years ago. He went to college and graduate school in the United States. After receiving his master's degree in electrical engineering, Applicant started working for a DoD contractor in 1996. He accepted a position with another DoD contractor in 2009, which is sponsoring him for continued access to classified information. He has held a security clearance for over 10 years without issue and is current on his security training. (Tr. at 37-39, 43; GE 1; AE C – D; Answer)

Applicant has continuously lived in the U.S. since he left Jordan nearly 30 years ago. He uses his U.S. passport on his foreign travels, including to Jordan. He only has a U.S. passport and travels to Jordan infrequently, once every two to three years. He has not been detained or questioned during his foreign travel. He has reported his foreign family members and travels on his initial and subsequent security clearance applications, as well as to his employer's security officer. He last traveled to Jordan in 2010. (Tr. at 37-39, 43-45, 65-67; GE 1)

Applicant married his wife in the mid-1990s. She is originally from the West Bank and is a U.S. citizen. She has a master's degree in biochemistry from a U.S. university and works part-time as a teacher at a U.S. school. They have two children, who were born in the United States. (Tr. at 38, 63-64; GE 1; AE C)

Applicant has owned a home in the United States for the past 10 years. His home is worth approximately \$650,000. His retirement accounts have a balance of

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<sup>1</sup> On November 6, 2012, the parties received actual notice of the hearing. However, Applicant did not receive the formal notice of hearing until November 15, 2012, or 13 days before the hearing. Applicant waived the 15-day notice requirement and indicated he was prepared to proceed. (Tr. at 8)

<sup>2</sup> Applicant's objections to AN III, IX, and XII were overruled. Department Counsel's summaries regarding Jordan, Israel, and the occupied territories were collectively marked Hearing Exhibit (HE) I. I fully considered AN I – XII, and the salient facts from these documents are set forth herein. Applicant's list of exhibits was marked HE II.

about \$160,000. His yearly salary is approximately \$150,000 and his net worth is about \$800,000. (Tr. at 38, 60-63, 70-71)

Applicant's parents are residents and citizens of Jordan. They are in their seventies and retired. Applicant is close to his parents and speaks with them at least every other month. He generally stays with them when he visits Jordan. He tries to visit Jordan once every two to three years. He opened a bank account in Jordan to pay for travel-related expenses in and around Jordan. It has a balance of approximately \$15,000. Applicant is the only one who has access to this account. He has consistently stated that he is willing to close the account if it poses a security risk. He does not use the account to support his foreign family members. He has no other property or financial interest in Jordan or other foreign country. (Tr. at 39-40, 42-45, 50-52, 56-60, 67; GE 1 – 2; AE C; Answer)

Applicant's two younger brothers are also residents and citizens of Jordan. One works in private industry, the other is a teacher at a private university. Applicant is not close to his younger brothers, because when he immigrated to the United States they were young children. His only contact with them is when he visits Jordan to see his parents. Applicant's two other brothers immigrated to the United States in the 1980s. They are either permanent residents or citizens of the United States. They both work in private industry in the United States. Applicant has a cousin who immigrated to the United States over five years ago. The cousin recently became a U.S. citizen, and lives and works in the United States. (Tr. at 40-52, 56-60, 67; GE 1 – 2; AE C; Answer)

Applicant's mother-in-law lives in the West Bank and is a citizen of Jordan. Applicant's wife is close to her mother, who is in her seventies. She speaks to her by telephone on a regular basis and visits her when they travel to Jordan to visit Applicant's parents. Applicant's wife has a number of much younger siblings who live in the West Bank and have Palestinian Authority travel documents.<sup>3</sup> Applicant's wife is not close to her siblings due to the age gap between them and the fact that she got married at a young age, at which point she left the West Bank for the United States. (Tr. at 52-57; GE 1 – 2; AE C; Answer)

Applicant responded to a DoD interrogatory regarding his foreign connections. In response to relevant questions, Applicant disclosed each of his foreign family members. None of his foreign family members work for or are connected to a foreign government or organization. Applicant does not provide financial support to his foreign family members. He has never applied for or received benefits from a foreign country, business, organization, or entity. He has never participated in a foreign country's political process. He does not owe any duty, obligation, or allegiance to any foreign person or group. He is not willing to bear arms for any foreign country, including his country of birth, Jordan. (Tr. at 59; GE 2)

In response to Department Counsel's question, Applicant explained that the reason he originally came to the United States was to go to school. He enjoys the type

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<sup>3</sup> The SOR and some of the exhibits incorrectly identifies these siblings as citizens of Israel.

of living afforded to him and his family in the United States. He enjoys and is immersed in U.S. culture, and is appreciative of the freedoms guaranteed to all citizens by the Constitution. (Tr. at 67)

Applicant's employer provided a letter of support, which reads, in pertinent part, as follows:

[Applicant] is exceptionally hard working. He is often in the office late into the evening, working on projects helping to maintain programs' challenging schedule. . . [He] has always acted with the utmost integrity. He follows all security measures and protects sensitive data as required by each program on which he works. I have no hesitation in recommending [Applicant] for continued issuance of a U.S. security clearance. (AE B)

### Jordan

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy with a robust economy and a modern infrastructure. Western culture features prominently in the lives of many Jordanians. At the same time, traditional Islamic ideals and beliefs provide a conservative foundation for the country's customs, laws, and practices. (AN I at 1) Relations between the United States and Jordan have been close for six decades, with Jordan's strong opposition to terrorism and vital commitment to peace and stability indirectly assisting wider U.S. interest in the region. (AE A) However, the U.S. State Department warns that the "threat of terrorism remains high in Jordan. Transnational and indigenous terrorist groups have demonstrated the capability to plan and implement attacks in Jordan. . . . Following the death of Usama bin Laden in May 2011, the Department issued a worldwide Travel Alert to all U.S. citizens traveling or residing overseas regarding the possibility of enhanced anti-American violence. Travelers to Jordan should be cognizant of the fact that Al-Qaida in Iraq affiliates have carried out terrorist activities against U.S. and Government of Jordan (GOJ) targets in Jordan." (AN I at 3) Furthermore, the State Department indicates concern for a number of human rights issues in Jordan, including citizens' inability to peacefully change their government. (AN II at 1)

### West Bank

Following the 1967 War between Israel and a number of Arab states, Israel seized the West Bank, Gaza Strip, and East Jerusalem.<sup>4</sup> Israel's occupation of the West Bank and Gaza Strip remains to the present day. In 1994, the Palestinian Authority (PA) was given limited self-rule over the West Bank and Gaza Strip, subject to supervening Israeli control. In 2007, Hamas, a designated Foreign Terrorist Organization (FTO), took over the Gaza Strip and has exercised control over the territory to the present day. The Fatah-led PA exercises limited civil and administrative control over the West Bank.

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<sup>4</sup> Also known as the Six-Day War where Israel also seized the Sinai Peninsula from Egypt and the Golan Heights from Syria.

However, the division of responsibilities and jurisdictions between the PA and Israel in the West Bank is complex and subject to change. (See *generally*, AN IV – VI, XI) On November 29, 2012, the United Nations voted to “accord to Palestine non-member observer State status.” The U.S. is concerned that this unilateral move by the Palestinians may further impede already stalled negotiations over a two-state solution. (See *generally*, AN XIII)<sup>5</sup>

The State Department “urges U.S. citizens to exercise caution when traveling to the West Bank. . . [s]everal groups operating in Israel, the West Bank, and Gaza have been designated as [FTO].” (AN V at 5-6) The threat posed by terrorist groups operating in the occupied territories, including the West Bank, is significant. Foreigners, including U.S. citizens, have been kidnapped and killed in the past. Many of these groups are openly hostile to the United States and U.S. interest. Furthermore, travel to and out of the West Bank by U.S. citizens of Palestinian, Arab, or Middle Eastern descent may result in detention and prolonged questioning, without being provided consular access. In addition, the State Department reports serious human rights problems throughout the occupied territories, to include arbitrary arrest and torture, often with impunity; some of which was reportedly committed by PA security forces on detainees. Corruption within the PA and throughout the West Bank remains a problem. See *generally*, AN V-VII.

## **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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for

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<sup>5</sup> AN XIII is the U.N. Resolution and the statement delivered by the U.S. Permanent Representative to the U.N. explaining the U.S.’s vote on the resolution. This event occurred a few days after the hearing, but was discussed at hearing and is clearly relevant to “a current and accurate assessment of the ‘geopolitical situation’ and the ‘security/intelligence profile of the country vis-a-vis the United States’.” ISCR Case No. 07-14508 at 4 (App. Bd. Oct 22, 2008). See *also*, ISCR Case No. 07-04496 (App. Bd. Oct. 22, 2008) (accurate assessment of the conditions in a foreign country and its relationship with the United States are critical in a Guideline B case and, at times, will require a DOHA judge to take into account significant events that take place after the close of the record).

presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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. “A clearance adjudication is an applicant’s opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country.”<sup>6</sup>

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.”

## **Analysis**

### **Guideline B, Foreign Influence**

The foreign influence concern is set forth at AG ¶ 6, as follows:

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.

An individual’s familial ties to a foreign country or territory can raise the foreign influence concern. There is no *per se* rule against individuals with familial ties to a foreign country or territory, even those that contain elements, within and outside the

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<sup>6</sup> ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

foreign government, hostile to the vital security interest of the United States. Instead, an individual with familial ties to such a country or territory bears a heavy burden in mitigating the foreign influence concern.<sup>7</sup>

In addressing the foreign influence concern, key factors an administrative judge must consider are: the foreign government involved, the intelligence gathering history of that government, the country's human rights record, and the presence of terrorist activity in that country.<sup>8</sup>

Applicant's two brothers and cousin, who are either citizens or permanent U.S. residents, do not raise the foreign influence concern. However, Applicant's family members in Jordan and the West Bank and his bank account in Jordan do raise the foreign influence concern. These foreign connections, coupled with the threat posed by extremist groups operating in Jordan and the West Bank, as well as the human rights issues in both Jordan and the West Bank, establish the following disqualifying conditions under 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;

(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;

(c) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(e) 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.

Applicant's foreign connections do not end the analysis. AG ¶ 8 sets forth a number of conditions that could mitigate the concern. The following mitigating conditions under AG ¶ 8 are relevant:

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<sup>7</sup> ISCR Case No. 01-26893 at 10 (App. Bd. Oct. 16, 2002) ("As a matter of common sense and sound risk management under the 'clearly consistent with the national interest' standard, an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk.").

<sup>8</sup> See ISCR Case No. 11-04980 at 4 (App. Bd. Sep. 21, 2012).

(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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant established AG ¶¶ 8(a), (b), and (c) as to his siblings in Jordan and his wife's siblings residing in the West Bank. Applicant and his wife are not close to their siblings due to the age gap between them and their siblings, and the fact that they immigrated to the United States when their siblings were still relatively young. Neither has fostered a relationship with their siblings over the years. The only contact either has with their respective siblings is when they travel to Jordan and the West Bank to visit their parents. The last such trip was three years ago. In light of the nature of the relationship and the limited contact that Applicant and his wife have with their siblings, the risk of a conflict of interest arising due to these foreign family members is nonexistent. Furthermore, as more fully explained, Applicant's deep connections to the United States fully mitigate any potential foreign influence arising from his foreign family members in Jordan and the West Bank.

Applicant also mitigated the foreign influence concern raised by his bank account in Jordan. Although the amount of money in the account is not immaterial, it is not sufficient to influence Applicant. First, it pales in comparison to Applicant's financial holdings in the United States and his salary from his position as a federal contractor. Second, the likelihood of foreign influence emanating from this account is minimal at best. The account is in Jordan, not the West Bank. Jordan, in contrast to the West Bank, is economically prosperous, has a relatively strong commercial and banking sector,<sup>9</sup> and is a close ally of the United States. Third, Applicant is the only individual who has access to the account. Not even his wife has access to the account. He only

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<sup>9</sup> See U.S. Department of State, Jordan Page, Country Study (Library of Congress), Chapter 3, available at <http://www.state.gov/p/nea/ci/jo/>.



uses the money to pay for the high cost of travel-related expenses while in and around Jordan. It is not a source of financial support for his foreign family members, which obviates the potential danger that such financial assistance could be traced back to Applicant by a foreign entity or group whose interest are inimical to the United States. Thus, I find that AG ¶ 8(f) applies to Applicant's foreign bank account.

Applicant's parents and his mother-in-law raise a much more significant concern, especially his mother-in-law due to her residency in the West Bank, where violent groups diametrically opposed to U.S. interest operate somewhat openly and the Palestinian leadership is at times antagonistic to U.S. goals in the region. However, Applicant established that he can be expected to resolve any potential conflict of interest in favor of U.S. national security due to his deep connections to and demonstrated loyalty to the United States. Applicant has lived in the United States for over 30 years. He took the oath of allegiance to become a U.S. citizen over 20 years ago. He has been educated, started a career, bought a home, and raised a family in the United States. His children were born and go to school in the United States. He has held a security clearance without issue for over ten years – the whole time while the same foreign familial connections that raise a concern have existed. He has reported his foreign connections on his security applications and to his employer's security officer as required. In short, Applicant established AG ¶ 8(b) and, more importantly, mitigated the foreign influence concerns raised by his parents and mother-in-law, as well as his other foreign family members and foreign bank account.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>10</sup> I incorporate my foreign influence analysis herein and note some additional whole-person factors. Applicant, after disclosing his foreign connections, was granted a security clearance over ten years ago. He has maintained the trust the nation first placed in him years ago by properly handling and safeguarding classified information, as attested to by his employer. Security clearance adjudications entail a certain degree of predictive judgment, where an applicant's past history is the best indicator of future conduct. Applicant established that he has a history of safeguarding this nation's secrets and there is no reason to doubt his ability to do so going forward.

Additionally, Applicant's personal character and integrity, which are vital matters to be considered in assessing an individual's suitability, are unassailable. Applicant has

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<sup>10</sup> The non-exhaustive list of adjudicative factors are: (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.

been candid about his foreign connections from the start. I had an opportunity to observe his demeanor as he testified and asked him several probing questions. I found him forthcoming with details in response to questions and wholly credible. This is consistent with his employer's assessment that Applicant possesses the "utmost integrity." (AE B) These favorable whole-person factors leave no doubt that Applicant will continue to guard this nation's secrets and will not succumb to any adverse influence, whether it be foreign or otherwise. Overall, the record evidence leaves me with no questions and doubts about Applicant's continued eligibility and suitability for access to classified information.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a through 1.i: For Applicant

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge