



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



In the matter of:)
)
) ISCR Case No. 11-12614
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

02/12/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under Guideline B, Foreign Influence. His eligibility for a security clearance is denied.

Statement of the Case

On August 30, 2010, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On October 10, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DOD for SORs issued after September 1, 2006.

On October 27, 2012, Applicant answered the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals

(DOHA). The case was assigned to me on November 29, 2012. I convened a hearing on January 9, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced two exhibits (Ex. 1 and Ex. 2), and offered a summary of facts found in two official U.S. Government source documents for administrative notice. The source documents were identified as Exs. I and II. The summary of facts and the source documents were identified as Hearing Exhibit (HE) I. HE I was admitted for administrative notice without objection.

Applicant testified, called one witness, and offered three exhibits, which I marked and identified as Ex. A, B, and C and admitted without objection. DOHA received the transcript (Tr.) of the hearing on January 17, 2013.

Findings of Fact

The SOR contains five allegations of security concerns under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.e.). In his Answer to the SOR, Applicant admitted all five allegations. Applicant's admissions are admitted as findings of fact.

After a thorough review of the record in the case, including witness testimony, exhibits, relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

Applicant is 33 years old, divorced, and the father of an eight-year-old child. He is employed as an information technology consultant by a government contractor, and he seeks a security clearance for the first time. (Ex. 1; Tr. 40-44.)

Applicant was born and raised in the Hashemite Kingdom of Jordan (Jordan). After graduating from high school, he studied business administration and management for two years at a college in Jordan. In 2003, he left Jordan and moved to Qatar, where he was employed as a quality control linguist by a U.S. government contractor. He met and married his wife, a native-born U.S. citizen, in Qatar, and their child was born there in January 2005. In August 2005, Applicant immigrated to the United States with his wife and child. (Ex. 1; Ex. 2; Tr. 50-53, 74-75.)

In April 2006, Applicant enlisted in the U.S. military and was assigned to work as a linguist. His domestic situation deteriorated, and he and his wife had marital difficulties. In July 2006, Applicant was arrested for attempted assault on his wife. He was sentenced to two years of probation. After one year, he was released from probation. In March 2007, he received a general discharge under honorable conditions and was released from the military. (Ex. 1; Ex. 2; Tr. 53-54.)

Applicant and his wife separated in 2008, and they have since divorced. They share custody of their child. Applicant became a U.S. citizen in 2009. (Ex.1; Ex. 2; Tr. 40.)

Applicant is the oldest of eight children. His mother and father are residents and citizens of Jordan. His mother is a housewife, and his father is an entrepreneur and inventor who specializes in alternative fuel sources. In 2009 and 2012, Applicant visited his family in Jordan. When he traveled to Jordan in 2012, Applicant took his child with him. In 2012, Applicant's mother also came to visit him in the United States. Applicant speaks by telephone with his mother and sometimes with his father once every month or once every two months. At ¶ 1.a., the SOR alleges that the citizenship and residency of Applicant's parents raise security concerns. (Tr. 55-58, 78, 82-83.)

The SOR alleges at ¶ 1.b. that Applicant's three brothers are citizens and residents of Jordan. One of Applicant's brothers works in the women's fashion industry in Jordan as a salesman. Another brother works as a self-employed sound system engineer. Applicant's third brother is a law student in Jordan. Applicant does not contact his brothers individually by telephone. His mother provides news and information about the brothers when Applicant speaks with her. However, the brother who is a law student communicates with Applicant by sending him text messages on his cell phone. (Tr. 60-61, 84-85.)

The SOR alleges at ¶ 1.c. that Applicant's four sisters are citizens and residents of Jordan. Two of Applicant's sisters are married and are housewives; one sister is a college student; and Applicant's youngest sister is in fifth or sixth grade. Applicant speaks with his sisters on the telephone about once every six months. (Tr. 61, 86.)

The SOR alleges at ¶ 1.d. that Applicant's aunt is a citizen and resident of Jordan. Applicant's aunt is a housewife. (Tr. 62.)

The SOR alleges at ¶ 1.e. that Applicant has a friend who is a citizen and resident of Jordan. Applicant's friend is a self-employed internet technology professional. Applicant and the friend grew up together and lived in the same neighborhood. They speak on the telephone every three or four months. The friend and his girlfriend are planning to visit Applicant in the United States. (Tr. 62-63, 87-89.)

Applicant's witness spoke highly of his character. She said she has known Applicant for about six years and considers him to be hard-working, loyal, and trustworthy. (Tr. 32-36.)

Applicant also provided letters of character reference from individuals with whom he had worked. His current business manager explained that he found Applicant to be "extremely reliable, honest, conscientious, highly ethical, professional, and extremely easy to get along with." He further stated that Applicant was "the most successful recruiter we have on our team." (Ex. A.)

Two other individuals provided positive letters of character reference in support of Applicant. They stated that Applicant is an able and valued colleague who is reliable and trustworthy. (Ex. B; Ex. C.)

I take administrative notice of the following facts about Jordan, which appear in official U.S. government publications and which were provided by Department Counsel to Applicant and to me:¹

The Hashemite Kingdom of Jordan is a constitutional monarchy ruled by King Abdulla II. According to the State Department's 2011 Human Rights Report, Jordan's three most significant continuing human rights problems were: 1) citizens' inability to peaceably change their government; 2) abuses committed with impunity by security forces; and 3) violence against women.

Other human rights problems were arbitrary deprivation of life, torture or mistreatment, poor prison conditions, arbitrary arrest and denial of due process through administrative detention, prolonged detention and external interference with judicial decisions, as well as infringement on citizens' privacy rights, and restrictions on freedom of speech, press, assembly and association.

Legal and societal discrimination against Jordanians of Palestinian origin remains widespread, particularly against those refugees who entered from Gaza after the 1967 Arab-Israeli War. Such persons are subject to arbitrary withdrawal of their citizenship without due process; exclusion from services such as access to public assistance, education, and medical services; and they are often under-represented in government due to their exclusion from the political process.

The Government of Jordan considers dual Jordanian-American citizens to be Jordanian citizens. Jordanian authorities may not inform the U.S. embassy of arrests, detentions, or accidents involving 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.

Under Jordanian law, any adult male may prevent a female or child relative from leaving the country by registering a hold on their travel with Jordanian authorities. This is possible even if the child or woman only holds U.S. citizenship. Jordanian authorities consider such disputes to be family matters and the U.S. embassy has a limited ability to intervene.

The threat of terrorism remains high in Jordan. Al-Qaida in Iraq affiliates have carried out terrorist activities against U.S. and Government of Jordan targets in Jordan. Such activities often do not distinguish between U.S. government personnel and private U.S. citizens.

¹ I have omitted footnotes that appear in the quoted materials.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s 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 and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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 contained in the record.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

A Guideline B decision assessing the security worthiness of a U.S. citizen with Jordanian contacts must take into consideration Jordan’s continuing human rights problems and the ongoing threats of terrorism against U.S. and Government of Jordan targets. American citizens with immediate family members who are citizens or residents of Jordan could be vulnerable to coercion, exploitation, or pressure.

I have considered all of the disqualifying conditions under the foreign influence guideline. The facts of Applicant’s case raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b).²

Applicant’s father, mother, three brothers, four sisters, aunt, and childhood friend are citizens and residents of Jordan. Applicant’s close relationships and contacts with these family members and a friend in Jordan, a country with a poor human rights record and a high risk of terrorism, create a heightened risk of foreign exploitation, inducement, manipulation, or coercion.

² AG ¶ 7(a) reads: “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.” AG ¶ 7(b) reads: “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 became a U.S. citizen recently, in 2009. In 2009 and 2012, he traveled to Jordan to visit his family members. In 2012, Applicant's mother also visited him in the United States. Applicant's telephone contacts with his parents occur monthly or every other month. His younger brother, a law student, sends Applicant text messages. Applicant's childhood friend hopes to visit Applicant in the United States, and Applicant has telephone contact with him every three or four months.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant has ten immediate family members who are citizens and residents of Jordan and a good friend, an internet technology professional, who is a citizen and resident of Jordan. Jordan has a poor human rights record and a high risk of terrorism. It is possible that one of the many Jordanian individuals with whom Applicant has close relationships could be pressured in a way that would put Applicant in the position of having to choose between the interests of that individual and the interests of the United States.

Applicant's ties to the United States are recent. He immigrated to the United States in 2005, and he became a U.S. citizen in 2009. Since becoming a U.S. citizen, he has traveled to Jordan twice. In 2012, his mother came to visit him in the United States. His ties to his family in Jordan are strong and enduring. It is not clear that he has such deep and longstanding relationships in the United States that he could be expected to resolve a conflict of interest in favor of U.S. interests.

Applicant is a concerned and involved family member. His commitments to his family members are admirable. His relationships with his family members, especially his mother, are filial and consistent. His contacts with his family members and his friend in Jordan are not casual. Applicant failed to rebut the Government's allegations that his contacts with his family members and friend who are citizens of Jordan created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant's contacts and relationships with these individuals could force him to choose between loyalty to them and the security interests of the United States. (ISCR Case No. 03-15485 at 4-6 (App. Bd. June 2, 2005); ISCR Case No. 06-24575 (App. Bd. Nov. 9,

2007)) I conclude that the mitigating conditions identified under AG ¶¶ 8(a), 8(b), and 8(c) do not apply to the facts of Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

Whole-Person Concept

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

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the whole-person concept and all the facts and circumstances surrounding this case. Applicant is a talented and valued employee of a U.S. government contractor. His colleagues and managers speak highly of him and his professional skills. He became a U.S. citizen in 2009. He seeks a security clearance for the first time. Applicant has strong ties to his family and a friend in Jordan. He has visited Jordan twice since becoming a U.S. citizen.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under AG B.

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: AGAINST APPLICANT

Subparagraphs 1.a. – 1.e.: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge