



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



In the matter of:)
)
) ISCR Case No. 11-13921
)
)
Applicant for Security Clearance)

Appearances

For Government, Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2013

Decision

MASON, Paul J., Administrative Judge:

Applicant was born in the West Bank in 1971. Between 1989 and 1998, he attended college and graduate school in the Czech Republic and completed bachelor’s and master’s degree programs. He married a U.S. citizen and emigrated to the United States. After becoming a naturalized U.S. citizen in 2003, he purchased his second house in this country in 2004. In 2011, he received a PhD from a U.S. university. Though he has developed some ties in the United States, his significant property interest in the West Bank and his periodic travel to the country between 2004 and September 2011 to see nine siblings, who are citizens and residents of the West Bank, has not been mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on April 28, 2011. On June 15, 2011, he provided an interview to an investigator from the Office of Personnel Management (OPM). On January 23, 2013, he signed a stipulation agreeing that the June 15, 2011 interview summary was admissible

in his hearing for all purposes. He acknowledged that before he signed the stipulation, he had reviewed the Department of Defense Directive 5200.6, specifically E3.1.20. He acknowledged that if he did not agree with the stipulation, the interview summary would be subject to an objection, and the summary would not be admissible in the hearing unless the Government produced an authenticating witness.

On November 7, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 in DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on December 21, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 15, 2013 and the hearing was held as scheduled on March 19, 2013. The hearing was held as scheduled. Three Government exhibits (GE) 1-3 were admitted in evidence without objection. Applicant testified at the hearing. His exhibit (AE A) was admitted into evidence without objection. References to the transcript will be cited as (Tr.), followed by the page number. DOHA received the transcript on March 28, 2013. The record in this case closed on March 28, 2013.

Rulings on Procedure

At the beginning of the hearing, Department Counsel requested that I take administrative notice of facts about Israel, the West Bank, and Gaza. The administrative request and five source documents relating to Israel, the West Bank, and Gaza are identified as HE 1 and admitted into the record. Applicant testified that he had no information for administrative notice consideration regarding Israel, the West Bank, and Gaza. He indicated he would testify about the source documents during the hearing. (Tr. 18-20)

Findings of Fact

The SOR has five allegations under foreign influence (Guideline B). Applicant admitted his six brothers are citizens and residents of the West Bank. (SOR 1.a) He admitted his three sisters are citizens and residents of the West Bank. (SOR 1.b) He admitted his brother was a member of the Palestinian Authority Parliament. (SOR 1.c)¹ He admitted he has a home in Ramallah, West Bank, with an approximate value of \$100,000. (SOR 1.d) Applicant denied he maintains a bank account in the West Bank with an approximate value of \$300. (SOR 1.e)

¹ Applicant provided the correct name of the governmental body. (Tr. 35)

Applicant is 41 years old. He has been employed by a U.S. defense contractor since February 2012. He is a Middle East conflict resolution adviser to the U.S. Department of State (DOS). Before his current employment, he was a political and media analyst for a contractor for more than four years. In that position, he assisted DOD agencies interpret news and write reports about issues in Middle East. Applicant has never possessed a security clearance.

Applicant was born in the West Bank in June 1971. After completing high school at the age of 18, he was awarded a scholarship by the Czech Republic, ministry of education, to attend college and graduate school in that country. He completed bachelor's and master's degrees in journalism and political science. In 1996, he met his wife, a U.S. citizen, in Russia during an educational exchange program. Upon completion of his master's degree in 1998, they married and he emigrated to the United States later that year. He became a naturalized citizen in June 2003. He attended a U.S. community college between 2002 and 2004. In March 2011, he received a PhD in conflict analysis and resolution from a U.S. university. In approximately September 2012, Applicant's wife gave birth to their first baby. (Tr. 55)

Applicant's six brothers and three sisters are citizens and residents of the West Bank. (SOR. 1.a, 1.b) They will be discussed in the same order in which Applicant testified about them at the hearing. His oldest brother died three years ago. Applicant's second oldest brother, born in 1946 in an area that was originally part of Israel, is retired after serving on the Palestinian governmental body from 1996 to 2006. (SOR 1.c) His wife is retired also. He decided not to run again after a terrorist organization was voted into power in 2006. While he served on the governmental body, he traveled to the U.S. under a DOS-sponsored program to observe how the U.S. legislature functions. In the middle 1990s, this brother worked with the United States and Israel in trying to accomplish peace. (Tr. 21-24)

Applicant's next brother was born in 1951 and is a sculptor and artist. This brother is divorced. The next brother is a translator for a Palestinian broadcasting company. His wife does not work. Applicant's next brother works for the city government of Ramallah, West Bank. The next brother is a clergyman and administrator of 20 mosques. The next brother is a traffic official in the city off Nablus, West Bank. His wife does not work.

Applicant's oldest sister is 61 years old and a housewife. Her husband is employed as a handyman. The second sister passed away two years ago. Applicant does not know the occupation of her husband. Applicant's third sister, a housewife, lived in Saudi Arabia until recently. Applicant has never met her husband who lives somewhere in Syria. The third sister is a housewife of a school teacher. Two of Applicant's brothers are employed in town government positions. Except for Applicant's second oldest brother, none of the brothers or sisters have ever been employed by the Palestinian Legislative Council, the governing authority in the West Bank. (Tr. 32-35)

In his e-QIP dated April 2011, and his interview summary in June 2011, Applicant indicated that in February 2006, he purchased a home in the West Bank that was worth approximately \$100,000. (SOR 1.d) He stated he purchased the home to have a place to stay when visiting his family. He considered the home a vacation location. He noted that the dwelling was not significant to his overall financial status and he could sell it. At the hearing, he testified he purchased the home for investment purposes. The home was not used as rental property and has remained empty since 2006. He has never stayed in the home. He noted that he has had trouble selling the home because the adverse real estate market in the United States also exists in the West Bank. He indicated he has a potential buyer. (GE 1 at 31, GE 2 at 4; Tr. 55-57)

In his April 2011 e-QIP, his June 2011 interview summary, and at the hearing, Applicant indicated that he opened a bank account in the West Bank. (SOR 1.e) He had approximately \$300 in the account before he closed it in September 2011. AE A was admitted into the record to support his testimony. The exhibit shows when the account was opened and reflects a zero balance, but no closing date. A stipulation was reached between Department Counsel and Applicant that based on Applicant's testimony the account was closed in September 2011. After weighing AE A with Applicant's testimony, I find the account was closed in September 2011. (GE 1 at 31, GE 2 at 4; Tr. 41-46, 80-81)

Applicant's Ties and Contacts to Foreign Family Members

Applicant informed the OPM investigator in June 2011 that he contacted his nine siblings once every three months by telephone. When he provided his answer to the SOR in December 2012, he stated his contact with his siblings, which goes mainly through his 61-year-old sister, decreased to a brief phone call to her during the holidays or for some major family event. He explained that the age difference between the rest of his siblings and himself added to his diminished family contacts. At a later point in his answer, he noted that since September 2011, he has had "very limited or no communication with my family." (GE 2 at 1; Answer to SOR at 2) At the hearing, Applicant testified that his second oldest brother's heart attack in September 2011, was another reason Applicant's contact with his family has decreased. (Tr. 37-39) He indicated he last spoke to his sister in approximately September 2012, when his wife had her baby. Before that date, he believed he may have spoken to his 61-year-old sister and one other sister at the beginning of 2012 to say hello. Applicant testified that he reduced his contacts with his family members abroad because he learned through research that close connections with foreign family members could be an obstacle to obtaining a security clearance. He has never provided financial support to his family members. He has never received any support from them. (Tr. 61, 63-66)

Between 2004 and September 2011, Applicant traveled to the West Bank five times. In August 2004, he visited family in the West Bank for 14 days. In July 2006, he visited family in the West Bank for 21 days. From July 2008 to August 2008, Applicant spent 14 days in the West Bank conducting preliminary research on his PhD. From April

2010 to May 2010, Applicant visited the West Bank to do more research on his PhD and to attend his sister's funeral. In August or September 2011, he returned to the West Bank to place his house on the market and to close his bank account. (GE 1 at 36-39; Tr. 58-61)

The only way Applicant was able to enter and leave the West Bank during his trips in April 2010 and September 2011, was with a travel document that is valid for two years. Though it would be very difficult to visit his family in the future, he would relinquish the document if required. (GE 2 at 1; Tr. 71) In his e-Qip, he stated:

I do carry a Palestinian Travel Document. It is not considered a passport, since a Palestinian citizenship does not exist under international treaties. The Travel Document that I have was issued for Palestinians from the West Bank after signing of the Oslo Peace Agreement between the Palestinians and the Israelis in 1993, under the auspices of the United States. I am ready to renounce my "non-US citizenship," however it would be hard to establish that I am holding another citizenship since Palestinian Authority is not considered a state. The Travel Document I have is intended for traveling in an out of the West Bank and this is the only way I can enter the West Bank to visit family members." (GE 1 at 7-8)

Following his September 2011 trip to the West Bank, Applicant testified that he transferred the travel document to his previous employer's facility security officer (FSO), who destroyed the document. The destroyed document is an additional reason that Applicant testified he was not going to return to the West Bank. Applicant testified that he would provide proof the document was destroyed. No confirming evidence was submitted. (Tr. 66-69, 82)

Applicant's net worth in the United States is approximately \$600,000. This amount represents the value of his home, bank account, savings account, and retirement account. He has owned his current home since 2004. He purchased his first home in 1999. Applicant testified that he has voted in every local and federal elections since he became a naturalized citizen in 2003. He attends conferences sponsored by DOS addressing security issues in the Middle East. (Tr. 56, 74-76)

Character Evidence

Applicant provided no character evidence regarding his job performance or his behavior in the community where he lives.

Administrative Notice

As set forth in AG ¶ 6 of Guideline B, the identity of the country or territory should be considered along with other considerations such as whether the territory is associated with the risk of terrorism. The Palestinian governmental body and Israel

should be considered because both exert varying degrees of control over the West Bank where Applicant's siblings are citizens and residents. Israel is a parliamentary democracy directed by a prime minister who exercises executive power in managing the government. The country occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem after the 1967 War. Negotiations in 1994 between Israel and the Palestinians led to the creation of the Palestinian Authority (PA) in the Gaza Strip and the West Bank. Hamas, a U.S. designated terrorist organization, has exercised authority over the Gaza Strip since June 2007. Other groups in Israel, the West Bank, and the Gaza Strip have been designated as Foreign Terrorist Organizations (FTOs) by the State Department. Those organizations include the Al-Aqsa Martyrs Brigade, and Kahane Chai (Kach).

Israel strictly controls the crossing points between Israel and the Gaza Strip. The State Department advises U.S. citizens to use caution when traveling to the West Bank. U.S. citizens, e.g., tourists, students, residents, and government personnel have been killed by terrorists in the West Bank and Gaza. Though violence in the West Bank has decreased measurably because of deployment of PA security forces, periodic disturbances, demonstrations, and violence continue to randomly occur. The State Department reports human rights problems in the occupied territories, some of which are perpetrated by PA security forces. There are reports the PA resort to torture, arbitrary detention, corruption, and other human rights violations. Overall, the occupied territories remain unstable.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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."

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 as to obtaining a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security concern of the foreign influence 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. 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains three disqualifying conditions that may be pertinent 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;

(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 individual's desire to help a foreign person, group, or country by providing that information;

(e) 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 a heightened risk of foreign influence or exploitation.

The mere possession of close ties and contacts with a family member in a foreign country or territory is not disqualifying under Guideline B. On the other hand, if an applicant has close contact with a relative or friend living in a foreign country or territory like the West Bank, that is associated with a risk of terrorism, this single factor may create a potential for foreign influence that is disqualifying under the guideline.

Applicant's six brothers and three sisters are citizens and residents of the West Bank. Until September 2011, Applicant contacted these family members approximately once every three months. He still owns a home in the West Bank. As of the date of the

SOR, he had a bank account in the West Bank. Based on his family connections and property interests in the West Bank, the Government has produced sufficient evidence that Applicant's ties and contacts pose a potential heightened risk of foreign exploitation and a potential conflict of interest. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 7(e) applies to Applicant's \$100,000 home in the West Bank. The home, which represents about 1/6 of his total financial interests in the United States, could become a source of foreign influence or exploitation.

The burden shifts to Applicant to present evidence under AG ¶ 8 that demonstrates he is unlikely to be placed in a position of having to choose between his family members and U.S. interests. The pertinent mitigating conditions are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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 minimal, or the individual has such deep and long-lasting 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.

The type of government in the foreign country or territory, the government's relationship to the United States, and the government's record for protecting human rights, are relevant concerns in evaluating whether an applicant's family members may be subject to government coercion. The risk of coercion is greater when the foreign government has an authoritarian government, or the governing authority is known to be associated with human rights abuses or terrorism.

Except for Applicant's second oldest brother, none of Applicant's siblings have been employed or affiliated with the Palestinian governmental body. Applicant's second oldest brother retired from the governmental body in 2006. This brother was the only

family member that visited the United States. None of Applicant's siblings know what type of work he performs or that he is applying for a security clearance.

At the hearing, Applicant indicated that he has reduced his contacts with his family members due to the age gap between him and his siblings. He also mentioned that the reduced contacts occurred after his second oldest brother suffered a heart attack in September 2011. He acknowledged that his decision to reduce his contacts was partially based on his understanding during the security investigation that close family contacts impaired his chances of obtaining a security clearance. Having weighed and balanced all the evidence, Applicant has not presented credible evidence to convince me that his contacts with his family in the West Bank no longer expose him to a heightened risk of foreign pressure or coercion.

Because of Applicant's property interest and travel to the West Bank, security concerns remain. In February 2006, he purchased a home in the West Bank. The home was worth approximately \$100,000 in April 2011. Applicant has not been forthright about why he purchased the home. In June 2011, he stated his purpose was to have a place to stay when he was visiting family in the West Bank. He considered the home a vacation spot. Yet, at the hearing, he indicated that investment was the reason he purchased the home and the dwelling has been empty since 2006. He has never stayed in the home when he was in the West Bank.

The second security concern is Applicant's travel to the West Bank. He has traveled to the territory five times since 2004. Considering his home in the West Bank, his periodic travel until September 2011, combined with the fluctuating political situation in the territory, the human rights abuses and risk of terrorism, Applicant could still be placed in a position of having to choose between his family members and U.S. interests. AG ¶¶ 8(a), 8(c), and 8(f) are inapplicable.

Applicant left the West Bank when he was 18 years old. He received a bachelor's and master's degree in the Czech Republic. He emigrated to the United States in 1998. He purchased his first home in 1999 and became a U.S. citizen in 2003. He obtained his PhD in 2011. He has held several U.S. jobs. He began his most recent job in February 2012. The United States has provided Applicant with opportunities to develop his career and his family. In balancing all the factors mentioned above, there is insufficient evidence to conclude that Applicant can be expected to resolve any conflict of interest in favor of U.S. interests. This conclusion is based on the absence of evidence demonstrating longstanding relationships and loyalties in the U.S. AE ¶ 8(b) has not been established.

Whole-Person Concept

I have evaluated the evidence under the disqualifying and mitigating conditions of the foreign influence guideline. I have also weighed this case within the context of the nine general factors of the whole-person concept. Those factors, set forth in AG ¶ 2(a)

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 the participation was 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 on careful consideration of the specific guidelines and nine factors under the whole-person concept.

Applicant is 41 years and has been married to a U.S. citizen since 1998. His wife recently had a baby. Applicant purchased his first home in 1999. After becoming a naturalized U.S. citizen in 2003, he purchased his second home in 2004. He has had several U.S. jobs, including a job as a foreign media analyst. After obtaining his PhD in conflict resolution from a U.S. university in 2011, he began working for a defense contractor in February 2012, as an advisor to the DOS on Middle Eastern issues.

On the other hand, Applicant has nine family members who are citizens and residents of the West Bank, an occupied territory that continues to experience terrorism and human rights abuses. The location of his nine siblings raises a heightened risk of foreign influence that has not been sufficiently reduced. Applicant owns a home worth approximately \$100,000 in the West Bank. He has not provided a reasonable explanation for why he has never stayed in the home since he purchased it in 2006, when he stated in June 2011 that he used the home to stay when visiting his family. He has provided no proof that his travel document was destroyed in September 2011, an important reason during his testimony for why he has decided not to return to the West Bank. Considering all the evidence under the disqualifying and mitigating conditions in the context of the whole-person concept, Applicant has not mitigated the security concerns associated with foreign influence.

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 (Foreign Influence, Guideline B):	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge