



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 11-14190
)
 Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on February 25, 2011. On September 19, 2012, the Defense of Defense (DOD) notified him that DOD adjudicators were unable to find that it was clearly consistent with the national interest to grant him access to classified information, and they recommended that his case be submitted to an administrative judge for a determination whether to grant or deny his application. DOD set forth the basis for the action in a Statement of Reasons (SOR), citing security concerns under Guidelines B and C. 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) implemented by DOD on September 1, 2006.

Applicant received the SOR on October 4, 2012; answered it on October 12, 2012; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 29, 2012, and the case was assigned to me on December 4, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2012, scheduling it for January 14, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. DOHA received the transcript (Tr.) on January 22, 2013.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Jordan and Syria. The requests and supporting documents are attached to the record as Hearing Exhibits I and II. The facts administratively noticed are set out below in my findings of fact.

Amendment of the SOR

Department Counsel moved to amend SOR ¶ 1.d to conform to the evidence. Applicant did not object, and I granted the motion. As amended, SOR ¶ 1.d reads: "You have one uncle and three aunts who are citizens of and reside in Jordan, and you have four uncles who are citizens of and reside in Syria." (Tr. 47.)

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 2.a, and 2.b. He denied SOR ¶ 1.b. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 29-year-old systems engineer employed by a defense contractor. He received a bachelor's degree from a U.S. university in May 2006 and has been pursuing a master's degree since January 2008. He worked for his current employer as a summer intern in 2003, 2004, and 2005, and began working as a mechanical engineer in June 2006 after he graduated. He was promoted to his current position as a systems engineer in February 2011. He has never held a security clearance. (Tr. 9.)

Applicant was born in Jordan. His father is a native of Jordan. His mother was born in Syria and renounced her Syrian citizenship "a long time ago." (Tr. 32.) Applicant came to the United States with his family in 1994, when he was about 11 years old. (Tr. 25, 27.) His father worked as a station manager for a government-operated Jordanian airline. Applicant returned to Jordan with his family for about a year around 1999, when his father's job required that he move to Jordan for a year. Applicant was a sophomore in high school at the time. After a year in Jordan, his father retired, Applicant and his family returned to the United States, and Applicant completed his education in the United States. (Tr. 40-41.) His father receives a pension from the Jordanian

government. (Tr. 31.) None of Applicant's other immediate family members have any connection to the Jordanian government.

Applicant, his parents, and his sister became U.S. citizens in October 2004. (GX 2 at 4-5.) His brother became a U.S. citizen in July 2011. (Answer to SOR.)

Applicant's sister is married to a Canadian citizen and lives in Canada. (GX 2 at 1, 5.) Applicant's parents and his brother lived continuously in the United States after his father's retirement until recently. At the time he submitted his SCA, Applicant lived with his parents and his brother. His parents recently moved to Canada to help his sister care for her newborn baby, and his brother moved to Canada to work as a substitute for his sister while she is on a maternity leave of absence from her job. (Tr. 36.)

Applicant has one uncle and three aunts in Jordan, who are his father's siblings, and four uncles in Syria, who are his mother's siblings. (Tr. 33, 39.) His father talks to his siblings by telephone about once a month. His mother talks to her siblings once or twice a week by Skype (an internet voice communication system). She has not traveled to Syria for a long time. Applicant's contact with his aunts and uncles is limited to saying "hello" to them when they are talking to his parents. (Tr. 37-38.) His aunts and uncles came to his sister's wedding in July 2008, but he did not have any contact with them. (Tr. 33-34.)

One of Applicant's aunts is a lawyer, a dual citizen of the United States and Jordan, and resides in Jordan. (GX 2 at 7.) The record contains no information about the occupations of his uncle and the other two aunts in Jordan. Two of his uncles in Syria work in an auto parts store and one is an architect. (Tr. 35.) One of his Syrian-born uncles is a salesman and is now an Italian citizen and resident. (GX 2 at 7.) Applicant's aunts and uncles are not connected to the governments or armed forces of Jordan or Syria. (Tr. 33-35.) They do not know that Applicant is being considered for a security clearance. (GX 2 at 7-8.)

Applicant's parents own a house in Jordan, where they stay when they visit family members. They spend about two weeks a year in Jordan. The house is unoccupied when they are not visiting. (Tr. 30.)

Applicant kept his Jordanian passport when he became a U.S. citizen. When his parents renewed their Jordanian passports in December 2006, he renewed his as well. He used his Jordanian passport once in July 2008, when he traveled to Jordan for his sister's wedding. (GX 2 at 6.) He used his Jordanian passport for this trip because it made it easier to go through security, and he was not required to obtain a visa or pay any fees. (Tr. 24-25.) In February 2011, after he learned that possession and use of a foreign passport raised security concerns, he destroyed it in the presence of his facility security officer. (GX 1 at 27; GX 2 at 6; Tr. 25.) His passport would have expired in December 2011. He told a security investigator that he is willing to renounce his Jordanian citizenship if it is necessary for a clearance. (GX 2 at 1.)

Applicant has never married and has no children. He has a retirement account and investment accounts in the United States. He has no property or assets in Jordan. He has not received any educational or other benefits from Jordan. He has never voted in a Jordanian election and never served in the Jordanian armed forces. He has no intention of returning to Jordan. (GX 2 at 1; Tr. 44-45.)

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. The administrative notice materials provided by Department Counsel do not reflect that Jordan is hostile to the United States or that it targets the United States for military or economic espionage. However, the threat of terrorism is high in Jordan. Terrorists do not distinguish between U.S. government personnel and private U.S. citizens. Jordan has significant human rights problems, including citizens' inability to peacefully change their government, abuses committed with impunity by security forces, and violence against and discrimination toward women. Other human rights problems include torture and mistreatment of detainees, arbitrary and prolonged detention, external interference with judicial decisions, infringement of privacy rights, and restrictions on freedom of speech, press, and assembly. Jordan considers dual Jordanian-American citizens to be Jordanian citizens and subjects them to obligations such as military service.

Syria has an authoritarian government and has been designated as a state sponsor of terrorism. It provides safe haven as well as political and other support to terrorist organizations. It maintains ties with Iran, also a state sponsor of terrorism. In May 2004, the President of the United States issued an executive order declaring a national emergency to deal with Syria's support of terrorism, occupation of Lebanon, pursuit of weapons of mass destruction and missile programs, and undermining U.S. and international efforts to stabilize and reconstruct Iraq. Additional executive orders were issued in April 2006 and February 2008 to deal with Syria.

Syria has an abysmal human rights record. Arbitrary arrests and detention are common. The government uses indiscriminate and deadly force to quell antigovernment protests. Its security forces monitor internal dissent and operate outside the control of the legal system. Officials who violate human rights act with impunity. Government corruption is rampant and the judiciary lacks independence. Syria conducts intense physical and electronic surveillance of both Syrian citizens and foreign visitors. In August 2012, the U.S. Government urged U.S. citizens remaining in Syria to depart immediately because of the volatile and unpredictable security situation.

Policies

"[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant's parents are dual citizens of the United States and Jordan (SOR ¶ 1.a); his brother is a citizen of Jordan (SOR ¶ 1.b); his sister is a dual citizen of the United States and Jordan (SOR ¶ 1.d); and he has one uncle and three aunts who are citizens and residents of Jordan and four uncles who are citizens and residents of Syria (SOR ¶ 1.d, as amended). The security concern under this guideline is set out in 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.

Two disqualifying conditions under this guideline are relevant to this case:

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; and

AG ¶ 7(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.

AG ¶¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it,

regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has refuted the allegation in SOR ¶ 1.b that his brother is a Jordanian citizen. His parents and brother have clearly demonstrated their preference for the United States, but they are “foreign” persons by virtue of their dual citizenship. His parents maintain regular contact with their father’s siblings and visit them yearly. Although Jordan does not pose a significant military or espionage threat to the United States, Applicant’s parents are at risk of terrorism when they visit Jordan. Thus, I conclude that the “heightened risk” under AG ¶ 7(a) and the “potential conflict of interest under AG ¶ 7(b) are established.

Three mitigating conditions under this guideline are relevant:

AG ¶ 8(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.;

AG ¶ 8(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; and

AG ¶ 8(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.

AG ¶ 8(a) is not established. Applicant's mother has renounced her Syrian citizenship and does not visit Syria. Her brothers are potential targets of insurgents or terrorists, but Applicant's lack of contact with them and their ignorance of his work in the United States make it unlikely that terrorists would exploit Applicant's Syrian uncles in an attempt to influence Applicant through his mother. It is equally unlikely that Applicant's Jordanian aunts and uncle would attempt to influence him through his parents. However, the exposure of Applicant's parents to terrorist activity during their annual visits to Jordan precludes a finding that a potential conflict of interest is unlikely.

AG ¶ 8(b) is established because Applicant's sense of loyalty or obligation to Jordan is minimal, his sense of loyalty and obligation to his aunts and uncles is minimal, and his relationships and loyalties in the United States are deep and longstanding. He has lived in the United States since adolescence, has been educated in the United States, has been a citizen for more than eight years, and has no desire to return to Jordan. He has destroyed his Jordanian passport and expressed willingness to renounce his Jordanian citizenship.

AG ¶ 8(c) is established for his aunts and uncles, because his contact with them is virtually non-existent. It is not established for his parents and siblings.

Guideline C, Foreign Preference

The SOR alleges that Applicant renewed his Jordanian passport in December 2006 (SOR ¶ 2.a) and used his Jordanian passport in lieu of his U.S. passport when he traveled to Jordan in July 2008 (SOR ¶ 2.b). The concern under this guideline is: "When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." AG ¶ 9. Under this guideline, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

The security concern under this guideline is not limited to countries hostile to the United States. "Under the facts of a given case, an applicant's preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests." ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

A disqualifying condition may arise from "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen," including but not limited to "possession of a current foreign passport." AG ¶ 10(a)(1). Applicant's renewal and use of his Jordanian passport establish this disqualifying condition.

The following mitigating conditions under this guideline are relevant:

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

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

AG ¶ 11(e): the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

AG ¶ 11(a) is not established because Applicant voluntarily renewed and used his Jordanian passport after becoming a U.S. citizen. AG ¶ 11(b) is established by Applicant's statement to a security investigator that he is willing to renounce his Jordanian citizenship if necessary. AG ¶ 11(c) is established because Applicant destroyed his Jordanian passport and it would have expired in December 2011 even if he had not destroyed it.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant was candid, sincere, and credible at the hearing. He has been raised and educated in the United States. He aspires to pursue his career in the United States. He feels no connection to Jordan and does not intend to return. His use of a Jordanian passport was a matter of convenience rather than a demonstration of foreign preference.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge