



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



In the matter of:)	
)	
)	ISCR Case No. 12-02890
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s spouse is a resident alien, and she is close to her parents, who are residents of Saudi Arabia. She has frequent contacts with her family in Saudi Arabia and frequently traveled to that country with Applicant. Considering the individuals and organizations based in Saudi Arabia providing financial and material support to terrorist groups specifically targeting American citizens and interests, there is a heightened risk of foreign inducement, pressure, or coercion against Applicant via his wife or her relatives living in Saudi Arabia. Foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCA) on July 23, 2009, and November 17, 2011. On September 5, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).¹ The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the

¹ 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted.

On October 5, 2012, DOD received Applicant's undated response to the SOR, requesting a decision based on the record. The Government requested a hearing before an administrative judge. (Hearing Exhibit (HE) 3) On January 4, 2013, the case was assigned to me. On January 9, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a notice of the hearing, setting the hearing for February 5, 2013. The hearing was held as scheduled. I received the transcript of the hearing on February 12, 2013. I held the record open until February 15, 2013 for Applicant to submit additional documents. (Tr. 109-110) No post-hearing documents were received.

Procedural Rulings

At the hearing, Department Counsel withdrew the allegation in SOR ¶ 1.d because Applicant turned in his Jordanian passport to the Jordanian embassy ten years ago. (Tr. 17) He also withdrew the allegations in SOR ¶¶ 1.e to 1.g because Applicant's travel to Jordan in 2006, to Saudi Arabia in 2010, and to the United Arab Emirates in 2010, did not raise a security concern. (Tr. 18-19)

Department Counsel offered five exhibits (Government Exhibits (GE) 1 through 5), and Applicant offered six exhibits (Applicant's Exhibits (AE) 1 through 6), all of which were admitted without objections.

Department Counsel requested I take administrative notice of facts concerning the governments of Saudi Arabia, Jordan, the West Bank, and Gaza. He provided citations to supporting documents to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request.

Findings of Fact

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a and 1.b. He denied the allegation in SOR ¶ 1.c. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 35-year-old expert in information security. He has worked for his employer, a government contractor, for almost one year. Applicant's parents and Applicant were born in Jerusalem, Israel. Applicant's father is a dual citizen of Israel and the United States. Applicant and his mother are not citizens of Israel. Applicant and his parents were born in Israeli-controlled territories. They did not acquire their Israeli citizenship at birth. His father acquired his Israeli citizenship at a later time. Applicant's mother is a naturalized U.S. citizen.

Both of Applicant's parents have U.S. passports and live in the United States. His father has not traveled outside of the United States since 2001. His mother has an Israeli identification card, which identifies her as an Arab. His parents are aware

Applicant works for a government contractor; however, they are not aware of details of his employment. His father is disabled, and his mother is not employed outside her home. He has five aunts and uncles who live in the United States and are all U.S. citizens. He also has cousins who live in the United States.

Applicant and his mother came to the United States briefly in 1994, using Jordanian documents. He obtained his green card and returned to Israel to finish high school. In 1995, at age 17, he immigrated to the United States. His aunt and uncle came to the United States in the 1970s, and they sponsored Applicant and his mother to enter the United States. Applicant became a U.S. citizen in 2002. (GE 1)

Applicant attended college in the United States. In 2006, Applicant received a bachelor's degree. In 2009, he was awarded a master's degree in information security. He worked for a government contractor and held a top secret security clearance from 2009 to November 2010. His clearance was withdrawn in 2010 because his spouse was not a U.S. citizen. His current employer, a defense contractor, is sponsoring him for a security clearance. (Tr. 71)

Applicant received his U.S. passport in 2002, and he immediately turned in his Jordanian passport to the Jordanian Embassy. (Tr. 49) He has not possessed or applied for any foreign passport since receiving his U.S. passport. He does not have any travel documents from a foreign country. Applicant does not own any financial interests or property overseas. He rents his home in the United States.

Applicant met his spouse when she was in the United States on a student visa. She was born in Saudi Arabia, but she is not a Saudi Arabian citizen. She was issued a travel document from Jordan to travel to the United States. She is not a Jordanian citizen. (Tr. 52, 72-74, 80; AE 2, GE 4)

Applicant married his wife in July 2010. She received a U.S. restricted green card because they have only been married one year. (Tr. 41; AE 5) She applied for a permanent green card as soon as she became eligible. She does not work outside their home. She traveled to Saudi Arabia in 2010, 2011, and 2012 to visit her parents and family members. The Saudi Arabian Government has not harassed anyone in Applicant's family. (Tr. 85)

Applicant's mother-in-law and father-in-law were born in Gaza. His in-laws are not permitted to be citizens of Israel because Gaza is considered an occupied territory, and they are Arabs. His father-in-law has not been in Gaza since 1991, and Applicant does not know when his mother-in-law was most recently in Gaza. His in-laws have lived in Saudi Arabia for about 35 years, and they currently live in Saudi Arabia. They have Saudi Arabian visas, and his father has a work permit issued by the Saudi Arabian government. Applicant's spouse has weekly contact with her parents. Applicant rarely communicates with his in-laws. (Tr. 81)

Applicant's in-laws are not citizens of Jordan. Their only contact with Jordan is to request travel documents, similar to a passport, but with limited or no citizenship rights

or privileges. They renew it every two years at the Jordanian Embassy in Saudi Arabia. They cannot use it to vote, and they do not have any citizenship rights in Jordan. They do not own any property in Jordan. His father-in-law is retired from his job with an oil company, and his mother-in-law is a housewife. His father-in-law receives a private pension from his employer. His in-laws came to the United States when Applicant married in July 2010. His mother-in-law came to the United States to visit Applicant and his spouse in 2012. (Tr. 43) Applicant and his spouse visited Saudi Arabia in November 2012. (Tr. 55, 61)

Four of Applicant's siblings-in-law were born in Saudi Arabia. Two of Applicant's brothers-in-law live in the United States; one brother-in-law lives in Canada; and one sister-in-law lives in Saudi Arabia. One of Applicant's spouse's uncles lives in Saudi Arabia. (Tr. 43, 56-58)

One brother-in-law (a permanent resident of the United States), made a statement on Applicant's behalf. He came to the United States from Saudi Arabia in 1997 using a Jordanian passport. He supports the U.S. Army and U.S. State Department in a secure environment. He described Applicant as a good U.S. citizen.

I take administrative notice of the following facts: Jordan's form of government is a constitutional monarchy ruled by a king. Jordan has continuing human rights problems and citizen unrest due to its inability to peaceably change its government, as well as security forces abuses, and violence against women. Other human rights problems are arbitrary deprivation of life, mistreatment of prisoners, poor prison conditions, arbitrary arrest, and other denials of due process.

Societal and legal discrimination against Jordanians of Palestinian origin is widespread. Such persons are subject to arbitrary withdrawal of their citizenship without due process and exclusion from services such as access to public assistance, education, and medical services.

As a result of the 1967 Arab-Israeli War, Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem. In 1994, the Palestinians established the Palestinian Authority (PA) in the Gaza Strip and West Bank. The PA lacked many of the powers and authorities of a full-fledged nation state. In June 2007, Hamas, a U.S. designated terrorist organization, took control of the Gaza Strip after a brief civil war. Hamas exerts significant control and influence in the West Bank, and generally among Palestinians, due to its popularity for its resistance to Israel. Several other groups operating in Israel, the West Bank, and Gaza have been designated as Foreign Terrorist Organizations (FTOs) by the State Department.

Hamas engages in violent resistance to Israeli occupation of Palestine, which includes the West Bank and the Gaza Strip. Hamas receives assistance from Iran, Syria, and the Lebanese Shiite militant group Hezbollah. Several other Foreign Terrorist Organizations operate in the West Bank and Gaza Strip. The State Department urges caution when traveling to the West Bank. U.S. Government personnel and their families are allowed only on specifically identified routes, and all other personal travel in the

West Bank, unless specifically authorized for mission-approved purposes, is prohibited. U.S. citizens have been injured, killed, and kidnapped by terrorists in the West Bank.

Saudi Arabia is a monarchy-ruled Middle East country. There are no political parties or elections. The country has significant human rights problems. The religious police harass and abuse individuals to comply with religious actions and customs. However, Saudi Arabia and the United States share a common concern over regional security. The United States' relationship with Saudi Arabia was strained after September 11, 2001, because the majority of the 19 terrorists who hijacked aircraft were from Saudi Arabia. There have been other terrorist attacks against United States citizens since 2001. This required the State Department to issue a travel warning for Saudi Arabia because of the terrorist activities targeted against American citizens and interests.

Terrorist groups in Saudi Arabia target locations where westerners may be located. The United States State Department has designated individuals and organizations based in Saudi Arabia as providing financial and material support to al Qaeda and other terrorist groups.

Saudi Arabia believes in fighting terrorism in its own country, and has taken steps to curtail terrorist and terror plans within its borders. Between December 2009 and December 2010, Saudi authorities arrested 765 people for their involvement in terrorist activities. It has had some successes and foiled some terrorist plots. The United States and Saudi Arabia share a common concern about regional security, oil production, exports, and imports, and sustainable development. The United States is committed to assisting Saudi Arabia with maintenance of Saudi Arabia's defensive capabilities. The United States and Saudi Arabia are allies in the war against terrorism.

Policies

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and common-sense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 includes two conditions that could raise a security concern and may be disqualifying 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 the individual's desire to help a foreign person, group, or country by providing that information; and

(d) 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.

AG ¶¶ 7(a), 7(b), and 7(d) apply. Applicant and his parents were born in Jerusalem, Israel. His spouse and siblings-in-law were born in Saudi Arabia. Applicant, his wife, and siblings-in-law traveled to the United States using Jordanian travel documents.

Foreign influence security concerns arise from Applicant's spouse and siblings-in-law being alien residents in the United States, and his parents-in-law and other in-law family members residing in Saudi Arabia. I note that Applicant's spouse is applying for U.S. citizenship, and she has a restricted green card. Notwithstanding, she is an alien and she has not completed the process of becoming a U.S. citizen. Applicant's wife communicates frequently with her parents in Saudi Arabia, and traveled to Saudi Arabia each year for the last three years. Applicant traveled to Saudi Arabia in 2010 and 2012. His mother-in-law visited Applicant in 2012. Applicant cares about his spouse, and she cares about the welfare of her family living in Saudi Arabia. Saudi Arabia's problem with terrorism and adherence to the rule of law creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.

Applicant and other family members' use of Jordanian travel documents do not create a security concern because of their absence of connections to Jordan. Jordan provides travel documents to Arabs and Palestinians with a connection to Gaza and areas controlled by Israel, but not actually incorporated into the state of Israel, such as Gaza and the West Bank. Connections of Applicant and his family to Palestine, including the West Bank and Gaza, are too attenuated to raise a security concern. No family members live in Palestine; there is no evidence that family members plan to move to Palestine; and there is no evidence that Applicant and his family have been to Palestine in many years.

The mere possession of close family ties with a family member living in Saudi Arabia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 or inducement. 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 collection operations against the United

States. The relationship of Saudi Arabia with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Saudi Arabia do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Saudi Arabia.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Saudi Arabia seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as state intelligence services. Moreover, Saudi Arabia has a significant problem with terrorism. Applicant's relationship with family members living in Saudi Arabia creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Saudi Arabia by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his family living in Saudi Arabia and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant lives with his spouse, who is an alien residing in the United States. She was born in Saudi Arabia, but she is not a citizen of Saudi Arabia. She has a Jordanian passport, but she is not a citizen of Jordan. She has frequent contacts with her parents, who live in Saudi Arabia. She is close to her parents, and to a lesser extent, to other relatives living in Saudi Arabia. She traveled to Saudi Arabia each year for the past three years, and her relatives have visited her in the United States in the last three years. Applicant and his spouse most recently traveled to Saudi Arabia in November 2012. His loyalty to his spouse, and her loyalty and connections to her family living in Saudi Arabia are a positive character trait; however, for security clearance purposes, those same connections to family living in Saudi Arabia negate the possibility of mitigation under AG ¶ 8(a). Applicant failed to fully meet his burden of showing there is “little likelihood that [his relationships with his relatives who are Saudi Arabia citizens] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has significant connections to the United States. He moved to the United States when he was 17 years old; both of his parents are U.S. citizens and live in the United States; and his employment is in the United States. Applicant has five aunts and uncles who live in the United States and are U.S. citizens. He earned bachelor and master’s degrees in the United States; and when he became a U.S. citizen in 2002, he swore an oath of loyalty to the United States. By all accounts, Applicant is a loyal U.S. citizen.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his wife, an alien resident of the United States, and her family living in Saudi Arabia. He lives with his spouse, and she frequently communicates with her family living in Saudi Arabia. There is no evidence that terrorists, criminals, the Saudi Arabian Government, or those conducting espionage have approached or threatened Applicant or his family in Saudi Arabia to coerce Applicant or his family for classified or sensitive information. However,

considering the individuals and organizations based in Saudi Arabia providing financial and material support to terrorists groups targeting American citizens and interests, there is a heightened risk of foreign inducement, pressure, or coercion against Applicant via his wife or her relatives living in Saudi Arabia.

AG ¶¶ 8(d), 8(e), and 8(f) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Saudi Arabia, Applicant has not been required yet to report his contacts with family members living in Saudi Arabia, and there is no evidence that Applicant has any interest in property or bank accounts in Saudi Arabia.

Concerning SOR ¶1.c, Applicant's parents have been residing in the United States since around 1995. They are naturalized U.S. citizens and residents, as are most of their relatives. His father is a dual citizen of Israel and the United States. His mother was never an Israeli citizen; however, she does possess an Israeli travel document. They last travelled outside of the United States in 2001. Applicant's parents established longstanding relationships and loyalties in the United States. There is no evidence that they have contact or communication with any foreign government or with foreign citizens. I find that there is little likelihood that Applicant's parents would create a risk for foreign influence or exploitation for Applicant.

In sum, Applicant's connections through his alien spouse to her family living in Saudi Arabia are significant. His connections to the United States taken together are insufficient to fully overcome the foreign influence security concerns under Guideline B. Foreign influence concerns under Guideline B are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is considered to be a loyal U.S. citizen with strong connections to the United States. Notwithstanding, foreign influence security concerns arise from Applicant's alien spouse and in-laws being citizens of Saudi Arabia. She has frequent contact with her family in Saudi Arabia, traveled to Saudi Arabia each year for the last three years, and Applicant traveled to Saudi Arabia in 2010 and 2012. Additionally, her family members living in Saudi Arabia visited Applicant and his spouse in the United States in the last three years.

Considering the individuals and organizations based on Saudi Arabia providing financial and material support to terrorist groups specifically targeting American citizens and interests, there is a heightened risk of foreign inducement, pressure, or coercion against Applicant via his wife or her relatives living in Saudi Arabia.

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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d through 1.g:	Withdrawn

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.

JUAN J. RIVERA
Administrative Judge