



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01430

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

May 25, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on May 19, 2014. (Government Exhibit 1.) On February 19, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). The action was taken under 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on April 15, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 14, 2016. The case was assigned to me on August 17, 2016. The Defense

Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 30, 2016. I convened the hearing as scheduled on October 18, 2016. The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant offered Applicant Exhibits A through C, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 26, 2016. Applicant submitted written corrections to the transcript on November 28, 2016. That document is marked and admitted into evidence as Applicant Exhibit D.

Findings of Fact

Applicant is 64 years old, and married with two children. He has a doctorate degree and is employed by a university. He is also a consultant with the Defense Department. Applicant is applying for a security clearance in connection with his consultant work.

Applicant was born in Egypt in 1952. His parents are by descent Palestinian, and were both born in what is now Israel. Prior to his birth, Applicant's family acquired Jordanian citizenship. Applicant moved to the United States in approximately 1981 to continue his education. Applicant became a naturalized American citizen in 1992. His parents also became naturalized American citizens. They are now deceased. Applicant's wife is a naturalized American citizen. His children are native-born American citizens. (Tr. 24-27, 46-47; Government Exhibit 1 at Sections 1-4, 9, 10, 17, and 18.)

Paragraph 1 (Guideline C – Foreign Preference)

The Government alleges in this paragraph that Applicant has acted in a way that indicates a preference for a foreign country over the United States.

Applicant presented five expired Jordanian passports to Department Counsel at the hearing, who examined them all. The most recent Jordanian passport was acquired in 2009, and expired in 2014. Applicant used that passport on two occasions, in 2012 and 2013, to visit Jordan. He used an older Jordanian passport to travel there in 1997. Other than those three occasions, all of his other travel to Jordan, as well as other overseas locations, has been with his American passport since becoming a citizen of the United States. He does not intend to apply for another Jordanian passport. (Tr. 28-29, 32-35, 37-38, 50.)

Applicant has a valid and current United States passport issued in 2010. Applicant stated, "American Passport anywhere on earth is respected." (Tr. 29; Government Exhibit 1 at Section 8.)

Paragraph 2 (Guideline B – Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for a security clearance because he has foreign contacts and interests that could lead to the exercise

of poor judgment, unreliability or untrustworthiness on his part, or make him vulnerable to pressure or coercion.

As stated, Applicant is a dual citizen of the United States and Jordan. However, Applicant has never lived in Jordan. Applicant's father obtained Jordanian citizenship for the family so they would not be stateless people as Palestinian refugees. Before moving to the United States in 1981 Applicant lived in Egypt. (Tr. 24-26.)

Applicant has one brother, who is a citizen and resident of Jordan. He worked in Saudi Arabia as a doctor for many years, but retired to Jordan. Applicant's brother's wife, his two children, and grandchild are all American citizens. The brother has extensive financial holdings in the United States. He also frequently travels to the United States, to visit Applicant and his family. (Tr. 38-43.)

Applicant's father-in-law was a Jordanian citizen. He passed away on August 6, 2014. (Tr. 21-22.)

Applicant has no financial interests in Jordan, or any other foreign country. His net worth in the U.S. is approximately \$250,000. (Tr. 47-49.)

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein.¹ Jordan continues to have significant continuing human rights issues, including mistreatment and allegations of torture by security and Government officials. Discrimination against Jordanians of Palestinian origin remains widespread. The U.S. State Department assesses the threat of terrorism in Jordan as high. Also of note, on January 30, 2017, the Secretary of Defense met personally with King Abdullah II. At the meeting, "The two emphasized the close nature of the U.S.-Jordan defense partnership and reiterated their shared commitment to ensuring a stable and secure Middle East."²

Mitigation

Applicant submitted evidence showing that he is a highly respected and successful academic, and has been for many years. He has received recognition for his work, as well as many academic and professional honors. Applicant has written over 300 publications. (Applicant Exhibits A, B, and C.)

Applicant testified very eloquently about his love for the United States, and how much he appreciates being an American citizen. He stated, "This country [the United States] gave me all what I've got. So I would kill myself for it." (Tr. 15, 30-31.)

¹ The following statements are based on the Government's administrative notice request (Government Exhibit 3), except as otherwise indicated. (See Tr. 20.)

² U.S. Department of Defense, DoD News, Defense Media Activity, *Mattis Meets With Jordan's King, Calls South Korean, Italian Counterparts*, <https://www.defense.gov/News/Article/Article/1065103/mattis-meets-with-jordans-king-calls-south-korean-italian-counterparts> (Jan. 31, 2017.)

Policies

Security clearance decisions are not made in a vacuum. 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 (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Paragraph 1 (Guideline C - Foreign Preference)

In this case the Government has met its initial burden of proving by substantial evidence that Applicant had a valid Jordanian passport. Applicant has mitigated the Government's concerns about that conduct. The concern is stated thus under this Guideline at AG ¶ 9:

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.

One Disqualifying Condition in AG ¶ 10 potentially applies to the facts of this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport.

In 2009 Applicant obtained a Jordanian passport. He did not realize that possession of a current foreign passport could be an issue. He used the passport twice for personal convenience. It has now expired, thereby invalidating it and establishing mitigation under AG ¶ 11(e). Guideline C is found for Applicant.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows at AG ¶ 6:

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.

The following disqualifying condition applies to this case under AG ¶ 7, based on the fact that Applicant's brother is living in Jordan:³

(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.

Applicant has provided compelling evidence to show that the following mitigating conditions under AG ¶ 8 also apply to this case, given his particular situation:

(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.; and

(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.

Applicant has lived in the United States for more than half of his life. His wife is a naturalized American citizen, and his children are native-born American citizens. Applicant convincingly states that he views himself only as an American citizen, and has shown that his loyalties are to the United States. His brother's wife and children are American citizens. Applicant has extensive personal and professional contacts in the United States that far outweigh his relationship to Jordan, which was merely one of necessity and convenience for his Palestinian family. Based on my analysis of the available information, Applicant has overcome the adverse inference arising from his minor familial contacts with Jordan. Guideline B is found for Applicant.

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

³ As stated, Applicant's father-in-law passed away in 2014.

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 all pertinent facts and circumstances surrounding this case. Applicant has mitigated all the security concerns arising from the SOR. He has mitigated the security significance of his family connections to Jordan. Applicant is a law abiding, trustworthy, and responsible American citizen and employee. Applicant has had a long and successful career in academia and as a consultant to the Defense Department. Overall, the record evidence does not create doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge