



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03397

Appearances

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

For Applicant: *Pro se*¹

November 21, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 20, 2012. (Government Exhibit 1.) On March 18, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). 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, 2006.²

¹ Applicant was represented by counsel for the sole purpose of filing an Answer in this case.

² I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

Applicant answered the SOR in writing (Answer) on May 23, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 11, 2016. The case was assigned to me on July 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 3, 2016. I convened the hearing as scheduled on February 10, 2017. The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant offered Applicant Exhibits A through D, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 23, 2017.

Findings of Fact

Applicant is 46 years old, and married with three children. Applicant is applying for a security clearance in connection with his application to work as a linguist for a defense contractor. This is his first application for a security clearance. Applicant denied all the allegations in the SOR, with explanations.

Paragraph 1 (Guideline B – Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for national security eligibility 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.

Applicant was born in Jerusalem, Israel in 1971. His father was by descent Russian, but was born in a part of Palestine, which is now Israel, in 1924. He is now deceased. Applicant's mother is Arab-Christian, and was born in Jerusalem in 1934. A Report of Investigation (ROI) was prepared after an interview of Applicant by an investigator from the Office of Personnel Management on October 8, 2009. The ROI states:

In 1948, Israel was established. At that time, the Subject's [Applicant's] father and mother both obtained citizenship of Jordan. . . . The Subject was not born with citizenship of any country due to the laws of Israel. He was granted a residency permit with Israel and his travel documents would indicate that he was a resident of Israel, but not a citizen. The Subject never held citizenship with any country until sometime in the 1990's, exact date not recalled, when the Subject obtained citizenship with Jordan due to his father's citizenship. (Government Exhibit 2 at 2.) (See Government Exhibits 1 at Section 10, and 3 at 4-5; Tr. 19, 37-38, 42-45, 64.)

As stated, at one point Applicant was a dual citizen of the United States and Jordan. However, Applicant has never lived in Jordan. Applicant's family always lived in

Jerusalem, or in Israel. He has no family in Jordan. Applicant renounced his Jordanian citizenship in 2009. (Government Exhibit 1 at Section 10; Tr. 41-42, 63-64.)

Applicant moved to Russia to obtain education to become a Russian-Orthodox priest. He married there. Applicant subsequently moved to the United States in 1992 to continue his education and find employment. Applicant eventually became a naturalized American citizen in 2005. Applicant's wife was born in Russia, and is also a naturalized American citizen. She remains a citizen of Russia.³ His children are native-born American citizens, and are also dual citizens of Russia. (Government Exhibit 1 at Sections 1-4, 9, 10, 17, and 18; Tr. 57-58, 81-82.)

Applicant's mother lives in Jerusalem. She is not a citizen of Israel, but has always lived in Israeli territory. While she is a citizen of Jordan, she has never lived there. She has no connection to any foreign government. (Tr. 63-65, 89.)⁴

Applicant's in-laws are citizens and residents of Russia. His father-in-law is a retired Russian Orthodox priest. His mother-in-law is a homemaker. He communicates with them on an occasional basis. They have no connection to the Russian government. (Tr. 59.)

Applicant's sister lives in Israel. Like Applicant, she is a Jordanian citizen. She is married to a Russian Orthodox priest, who is also a Russian citizen. She acquired Russian citizenship through marriage. They have no connections to the Russian, Israeli or Jordanian governments. (Answer at 3; Tr. 80-81.)

Because of his family connections, Applicant has traveled to or through Russia, Israel or Jordan several times over the past ten years. He last visited Russia on a business trip in 2016. While he is sponsored by a defense contractor for a security clearance, Applicant is not currently working for them. In order to make money and feed his family, Applicant obtained a job through the Russian Orthodox Church and is currently managing a hotel in the Palestinian Authority. (Tr. 34-37, 59-60, 84-85.)

Applicant has no financial interests in Jordan, or any other foreign country. He owns a house here in the United States. (Tr. 65.)

Paragraph 2 (Guideline C – Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for national security eligibility because he has acted in a way that indicates a preference for a foreign country over the United States.

³ In accordance with the evidence, the SOR was corrected to show that Applicant's wife is not a citizen of Israel. (Directive ¶ E3.1.17.) (Tr. 86-88.)

⁴ In accordance with the evidence, the SOR was corrected to show that Applicant's mother is not a citizen of Israel, but only resident there. (Directive ¶ E3.1.17.) (Tr. 88-89.)

Applicant applied for a Jordanian passport in 2008. He used this passport to travel to Jordan on a single occasion to visit his gravely ill father. After his father passed away he surrendered this passport to his company security office in 2010, after beginning work in the defense industry. The passport has since been destroyed. He has no interest or desire to obtain another Jordanian passport. (Government Exhibit 1 at Section 10; Tr. 40-41, 67-68.)

Applicant has a valid and current United States passport issued in 2014. He has used this passport for all of his international travel. (Applicant Exhibit D.)

Administrative Notice

Department Counsel requested that I take administrative notice of facts concerning Russia, Jordan and Israel. He submitted documentation supporting his request, which are identified as Government Exhibits 4, 5, and 6. Applicant had no objection and the exhibits were admitted. The facts so noticed are set forth below:⁵

The Russian Federation (Russia) is a leading state intelligence threat to U.S. interests. Russian intelligence services continue to target U.S. and allied personnel with access to sensitive computer network information. Russia is taking information warfare to a new level, working to fan anti-US and anti-Western sentiment both within Russia and globally. Russia has significant human rights problems, including restrictions on civil liberties, denial of due process in politically-motivated cases, and widespread corruption. Finally, Russia is considered to be at a high risk of local, regional, and international terrorism. (Government Exhibit 4.)

The State of Israel is a parliamentary democracy. Israel's prime minister leads the executive branch of the government. The United States is Israel's leading trading partner. Israel respects the rights of its citizens; however, there are some concerns about Israel's detention and interrogation of alleged terrorists, and discrimination against Arabs. Terrorism is a continuing threat to Israel and American interests in Israel. Since 1948, the United States and Israel have developed a close friendship based on common democratic values, religious affinities, and security interests. Occasionally, Israeli and American interests have diverged. Several U.S. government employees have been prosecuted for disclosure of classified information to persons connected to the Israeli government. Israel has an active program to gather proprietary information from U.S. companies. (Government Exhibit 5.)

The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy ruled by King Abdullah II bin Hussein. 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

⁵ The following statements are based on the Government's administrative notice request (Government Exhibits 4, 5, and 6), except as otherwise indicated. (See Tr. 16-17.)

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.” (Government Exhibit 6.)⁶

Mitigation

Applicant submitted evidence showing that he is a highly respected and successful linguist. Military members who worked with him, as well as co-workers, describe him as a disciplined person, with a sense of responsibility and integrity. (Applicant Exhibits B, and C.)

Applicant testified very eloquently about his love for the United States, and how much he appreciates being an American citizen. He described how his life in Israel and Russia was somewhat like being a fish out of water. He said that he came from a country where:

“[T]here are Jews and Muslims and [they are] constantly fighting and everybody hates each other and not knowing myself even who I am. And trust me, Your Honor, it has been a journey in my life because if somebody considers me an Arab over there, and I go to Russia, they considered me an Arab. And Arabs consider me a Russian. And the only thing when I came to the States, I find out that nobody cares. And I am who I am, and it is what it is. (Tr. 22.)

He further testified that the United States was the only place, “where, you know, I felt like a human being. Nobody cares. I mean everybody accepted me with love and open doors. My neighbors, my friends, you know.” (Tr. 84.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant’s suitability for national security eligibility 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

⁶ 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.)

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 national security eligibility 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 national security eligibility to 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 B - Foreign Influence)

¶ 6: The security concern relating to the guideline for Foreign Influence is set out in AG

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result

in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (e) shared 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.

Applicant has family connections to Russia, Israel and Jordan. He has also traveled to all three countries. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the

individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(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;

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. 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 family. Though he is of Russian descent, he was born in Palestine (now Israel) and has limited contact with Russia, based solely on his wife's family. His relationship with Israel is based solely on his mother living in Jerusalem and his sister elsewhere in Israel. While born in Israel, he has never been a citizen. Based on my analysis of the available information, Applicant has overcome the adverse inference arising from his minor familial contacts with Russia, Israel and Jordan. Guideline B is found for Applicant.

Paragraph 2 (Guideline C - Foreign Preference)

The security concern relating to the guideline for Foreign Preference is set out in 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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10.

(a) applying for and/or acquiring citizenship in any other country;

(b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;

- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

In 2008 Applicant obtained a Jordanian passport in order to visit his father. He no longer has the passport, and he has always been forthcoming to the Government about his foreign travels. Applicant's conduct could arguably be viewed as disqualifying under the previous adjudication policy. However, the mere fact he obtained and used a foreign passport is not cognizable under any of the current disqualifying conditions. Since none of the disqualifying conditions apply to Applicant's conduct, it is unnecessary to consider the mitigating conditions. Guideline C 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(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security 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 minimal family connections to Jordan, Israel and Russia. Applicant is a law abiding, trustworthy, and responsible American citizen and employee. Applicant has had a successful career as a linguist. 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 B:	FOR APPLICANT
Subparagraphs 1.a through 1.1:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge