



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



In the matter of:)
)
-----) ISCR Case No. 16-02150
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

07/19/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for access to classified information. The evidence is sufficient to mitigate the security concern based on his ties to Jordan, the country of his birth. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on June 2, 2015.¹ This document is commonly known as a security clearance application. Thereafter, on October 25, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified

¹ Exhibit 1.

information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference.

Applicant, without assistance of counsel, answered the SOR on November 30, 2016. He admitted the SOR allegations, provided explanatory information, provided proof that he voluntarily surrendered his then current Jordanian passport, and he requested a decision based on the written record in lieu of a hearing. Subsequently, he retained counsel and requested a hearing

The case was assigned to me on May 1, 2017. The hearing took place as scheduled on July 11, 2017. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-5 and Applicant's Exhibits A-J. The hearing transcript was received on July 19, 2017.

Procedural Matters

In closing argument, Department Counsel conceded that the Guideline C foreign preference matters in the SOR should be decided in Applicant's favor.² The concession was based on the fact that Applicant's possession of a then valid Jordanian passport does not raise a security concern under the disqualifying conditions of the now applicable version of Guideline C, which has been in effect since June 8, 2017. Department Counsel's concession is well taken, and the Guideline C matters are decided for Applicant without further discussion.

Findings of Fact³

Applicant, a Jordanian citizen by birth, is a 72-year-old employee who is seeking a security clearance for his job as a linguist in support of the U.S. armed forces. This is his initial application for a security clearance. His formal education includes a bachelor's degree in commerce and accounting awarded by a university in Lebanon. He is married and has five adult children. Two of the children are native-born U.S. citizens and three were born in Jordan. He obtained U.S. citizenship in 2008, and his wife obtained U.S. citizenship in 2009. He has owned a home in the United States since 2013.

Applicant spent about 33 years working as an accountant and auditor for a major airline in Jordan and internationally. He married in 1975. He took a one-year leave of absence to further his education in the United States during 1976-1977. His wife's family lived in the United States and they sponsored them for a green card. He returned to Jordan in 1977 and continued working there until the airline transferred him to an office in the United States. He worked here during 1979-1981. He returned to Jordan in

² Tr. 71.

³ In making findings of fact, I have relied heavily on Applicant's hearing testimony and the counterintelligence-focused security screening Applicant went through in 2004 and 2015 (Exhibits 3 and 4).

1981 and continued working there until the airline transferred him to an office in Germany. He worked there during 1996-2000. He returned to Jordan in 2000 and continued working there until 2003, when he decided to take an early retirement from the airline.

Already a lawful U.S. resident, Applicant returned to the United States in 2003 and joined his wife and children. During 2004-2011, he worked for a series of defense contractors as a linguist in Baghdad, Iraq. His employment in Iraq ceased in December 2011, when he was laid off due to end of the mission. He was unemployed until about September 2013, when he resumed working as a linguist in Kuwait. He has been working as a linguist in Jordan since May 2014 in support of the U.S. Army Central Command. According to a highly favorable letter of recommendation from his program manager, Applicant is a “mature, intelligent, self-motivated professional;” he has a “great attitude” and is “a model employee;” customers have praised him for “his work ethic and his conduct;” and he is “an asset to our team.”⁴ In addition to his program manager, Applicant presented multiple letters of recommendation vouching for his trustworthiness.⁵

The Guideline B foreign influence allegations concern Applicant’s family ties to Jordan and financial interests in Jordan. The first allegation concerns Applicant’s son, brother, and two sisters, all of whom are citizens of and residents in Jordan. The son is a Jordanian citizen who is employed as an accountant and auditor for the same major airline for which Applicant was employed. His son is in the process of re-obtaining legal residence in the United States for himself and his family, having filed the necessary paperwork in 2015. They intend to immigrate to the United States upon approval. Applicant’s brother is deceased, having passed away in 2017. Applicant’s two sisters, aged 80 and 78, are living at home, and he has contact with them about once or twice a year, usually at holidays. They are unaware of Applicant’s current employment or application for a security clearance.

The second allegation concerns Applicant’s son and a sister, both of whom are dual citizens of the United States and Jordan as well as residents of Jordan. His son, a native-born U.S. citizen, who is married to a U.S. citizen, is a missionary and pastor of a church in Jordan. Their primary residence is in the United States and they intend to return here. Likewise, Applicant’s sister is working as a missionary in Jordan and her primary residence is in the United States.

The third allegation concerns Applicant’s daughter-in-law who is married to the first son mentioned above and employed by the Jordanian military. Applicant explained his daughter-in-law works in the field of information technology and has had her current job for about five years. She, along with his son, intend to immigrate to the United States as mentioned above.

⁴ Exhibit F.

⁵ Exhibit F.

The fourth allegation concerns Applicant's ownership of real estate in Jordan, which consists of residential real estate currently occupied by his son (the airline accountant) and his daughter-in-law. Applicant estimated the value at about US \$70,000. He intends to sell the home after his son and daughter-in-law immigrate to the United States.

The fifth allegation concerns Applicant's receipt of a retirement benefit from his former employer, the major airline in Jordan. Applicant explained this benefit is not a company-paid pension but is a Jordanian form of social security. Since age 70, he has received about US \$840, which is deposited in his bank account in Jordan. A normal account balance is less than US \$3,000. He uses the money to pay for his personal expenses while he is working in Jordan and intends to transfer the money to his bank account in the United States when he resumes living in the United States.

Except for the retirement benefit, real estate, and bank account, Applicant has no financial, business, or property interests in Jordan. He estimated his net worth at about \$300,000 to \$350,000. He receives a U.S. Social Security benefit, since age 70, of \$1,266 monthly. His current annual salary is in the range of \$62,000 to \$72,000.

Including this case, Applicant has been interviewed or questioned by representatives of the U.S. Government multiple times.⁶ He was initially interviewed and was required to complete a counterintelligence screening questionnaire in 2004 for his job as a linguist in Iraq. He was presumably subject to scrutiny by U.S. immigration officials in 2008 when he went through the naturalization process and procedure. He completed another counterintelligence screening questionnaire in 2015. And he was interviewed as part of the background investigation for this case in 2015.

Administrative or official notice is taken of certain facts about Jordan as described in Department Counsel's written request and Applicant's written request.⁷ 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 peacefully change its government, the mistreatment and allegations of torture by security and government officials, restrictions on freedom of expression and assembly, aggressive political factions and terrorist organizations, and violence against women. The threat of terrorism in Jordan is considered to be high because of past terrorist activities targeting both United States and Jordanian interests. The Jordanian government considers U.S.-Jordanian dual citizens to be Jordanian citizens subject to their laws.

The United States deeply values its long history of cooperation and friendship with Jordan, having established diplomatic relations in 1949. The United States appreciates the leadership role that Jordan plays in advancing peace and moderation in the region. The United States and Jordan share the mutual goals of a comprehensive, just, and lasting peace in the Middle East and an end to violent extremism that

⁶ Exhibits 1-4.

⁷ Exhibits 5 and J.

threatens the security of Jordan, the region, and globally. The policy of the United States is to seek to reinforce Jordan's commitment to peace, stability, and moderation. The United States has helped Jordan maintain its stability and prosperity through economic and military assistance and through close political cooperation. The United States encourages Jordanian efforts to continue to implement political and economic reforms that will secure a better future for the people of Jordan.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.⁸

It is well-established law that no one has a right to a security clearance.⁹ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁰ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹¹ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹²

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹³ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

⁸ The 2017 AG are available at <http://ogc.osd.mil/doha>.

⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁰ 484 U.S. at 531.

¹¹ 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸

Discussion

The gravamen of the SOR under Guideline B is whether Applicant's ties to Jordan should disqualify him from access to classified information. Under Guideline B for foreign influence,¹⁹ the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is:

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.²⁰

Given the evidence of Applicant's ties to Jordan, I have considered the following disqualifying and mitigating conditions under Guideline B as most pertinent:

AG ¶ 7(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;

AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

²⁰ AG ¶ 6.

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;

AG ¶ 7(f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions of 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;

AG ¶ 8(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

AG ¶ 8(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.

Based on U.S. concerns about the risk of terrorism, Jordan meets the heightened-risk standard in AG ¶ 7(a). This conclusion is based on the facts set forth in Department Counsel's written request for administrative notice.²¹

Applicant's connections to Jordan are sufficient to raise a concern under Guideline B. With that said, Applicant has the signs of being a mature and responsible person. His long employment history, going back to about 1969 is indicative of a reliable and trustworthy person. Moreover, his employment history includes the challenging and difficult job of working as a linguist in support of the U.S. armed forces in Iraq for several years and more recently in Kuwait and now Jordan. His willingness to endure the associated hardships for many years is a circumstance that weighs heavily in his favor. Although he has both family and cultural ties to Jordan, he has strong family ties to the United States, as most of his large immediate family live here. Most of his financial assets, including his home, are in the United States, and his foreign financial and property interests are of a routine nature such that they are unlikely to result in undue foreign influence. Moreover, his closest family members (excluding his two elderly sisters) in Jordan will be living and working in the United States in the future. There is

²¹ Exhibit 5.

nothing unusual about Applicant's ties or connections to Jordan, and they are a reflection of a man who has had a long career working in Jordan and internationally, to include the United States.

This process is not a zero-risk program, because nearly every applicant presents some risk or concern. Many security clearance cases come down to balancing that risk or concern. Here, on balance, I am satisfied that the strength of his ties to the United States greatly outweigh and overcome his ties to Jordan. I would describe Applicant's ties to Jordan at this point in his life as far weaker than his ties to the United States, which are quite strong. Moreover, he has been thoroughly vetted, and he has proven both his reliability and commitment to the United States by his willingness to work for many years as a linguist in support of the U.S. armed forces. This is clearly not a case of "divided allegiance" with an applicant who has one foot in each country. To the contrary, Applicant appears to have both feet planted here in the United States, although the nature of his employment has required him to live and work in the Middle East for extended periods. Viewing the record evidence as a whole, Applicant can be expected to resolve any potential concern or potential conflict of interest in favor of the U.S. interest.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline C:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a – 2.e:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge