



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



In the matter of:

[REDACTED]

Applicant for Security Clearance

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ISCR Case No. 17-00298

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2018

**Decision**

MARINE, Gina L., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 18, 2016. On March 24, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order (EO) 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 answered the SOR on April 25, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 24, 2017. The case was assigned to me on October 17, 2017. On November 15, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 5, 2017. The hearing was convened as scheduled.

At the hearing, Government Exhibits (GE) 1 and 2 were admitted into evidence, without objection. The Government's exhibit list was appended to the record as Hearing Exhibit (HE) I, and its request for administrative notice of relevant facts about Jordan and Israel as HE II and III. Applicant testified and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. DOHA received the transcript (Tr.) on December 20, 2017.

On June 8, 2017, the DOD implemented new AG.<sup>1</sup> Accordingly, I have applied the June 2017 AG.<sup>2</sup> However, I have also considered the September 2006 AG because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

### **Findings of Fact<sup>3</sup>**

Applicant is 34 years old. He has been married for 12 years. He and his wife have a child, age 3, and they await the birth of another child in early 2018. Applicant received his bachelor's degree in 2006 from a university in Jordan, and his master's degree in 2011 from the U.S. university for whom he is currently employed full time while working on his Ph.D. degree. He also interns part time for a U.S. engineering company. In 2016, a U.S. defense contractor offered Applicant a full-time position as an electrical engineer, contingent on him obtaining a security clearance.<sup>4</sup>

Applicant immigrated to the United States in 2005, as a citizen of Jordan. He returned to Jordan to finish his last semester of university, and then returned to the United States, where he has resided full time since 2006. In 2010, he became a naturalized U.S. citizen, retaining dual citizenship. His three-year old is a U.S. citizen by birth as will be his expected child. His wife became a naturalized U.S. citizen in September 2017.<sup>5</sup>

Applicant's parents, four of his five brothers, and his wife's parents are citizens and residents of Jordan (SOR ¶¶ 1.a and 1.c). Applicant's father and one of his four Jordanian-citizen brothers (Brother 1) also maintain dual U.S. citizenship. His fifth

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

<sup>3</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer and his SCA (GE 1).

<sup>4</sup> See also AE G; Tr. at 7-8, 48, 65-68, 110-111.

<sup>5</sup> See also AE G, H; Tr. at 44-47.

brother resides in the United States and maintains dual citizenship with the United States and Jordan (Brother 5). His sister is a citizen of Jordan residing in Israel (SOR ¶ 1.b). None of these family members had careers affiliated with a foreign military or government except for his father, who may have been employed by the government of Jordan as a teacher.<sup>6</sup>

Applicant's mother, age 70, has never worked outside of the home. Applicant communicates with her daily, primarily by phone and sometimes via video call. She has visited him in the United States twice since 2006, most recently in 2015. On her visits, which were approximately one to two months long, she stayed with Applicant and Brother 5.<sup>7</sup>

Applicant's father, age 74, immigrated to the United States on his own in the late 1990s intending to live permanently and eventually migrate the rest of his family. However, he relocated back to Jordan in 2010 to rejoin Applicant's mother, who had no particular disdain for the United States or its policies, but preferred to remain in Jordan. Prior to his retirement, Applicant's father worked as a teacher in Jordan and as a grocer in the United States. Applicant believed, but was not certain, that his father taught at a public school, and as a result, is receiving a government pension of an unknown amount. Applicant's father owned two properties in the United States until 2015 when he transferred them to Brother 1's daughter. Applicant communicates with his father approximately once every other week, primarily by phone, and on occasion, during his video chats with his mother.<sup>8</sup>

Brother 1, age 48, immigrated to the United States in either the late 80s or early 90s. He lived in the United States with his family until approximately 2000 when he returned to Jordan, due to financial issues. Three of Brother 1's sons reside in the United States, and Brother 1 plans to return to live and work in the United States at some point in the foreseeable future. While in the United States, Brother 1 owned and operated a grocery store until he transferred it to Brother 5. In Jordan, Brother 1 is self-employed in the construction field. Since 2000, Brother 1 has visited the United States one time, in 2015 during the same visit as his mother. Applicant communicates primarily by phone with Brother 1, approximately once every two months, including sometimes when he is present during Applicant's phone calls with his mother.<sup>9</sup>

Brother 2, age 46, is self-employed as a taxi driver. Applicant communicates with Brother 2 once every two months, by phone, text, or social media.<sup>10</sup>

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<sup>6</sup> See also Tr. at 37-44, 49, 76.

<sup>7</sup> See also Tr. at 70-71, 74-76.

<sup>8</sup> AE K and L; See also Tr. at 36-37, 48-49, 69, 71-88, 118-119.

<sup>9</sup> AE K and L; Tr. at 36-37, 48-49, 82-88, 117-118.

<sup>10</sup> See also Tr. at 38, 88-93.

Brother 3, age 42, is employed by a private insurance company. Applicant communicates with Brother 3 approximately once every three months, including sometimes when he is present during Applicant's phone calls to his mother.<sup>11</sup>

Brother 4, age 40, is self-employed as an accountant. Applicant communicates with Brother 4 approximately once every two months, by phone, and approximately once or twice a week by text or social media.<sup>12</sup>

Applicant's mother-in-law, age 49, has never worked outside the home. His father-in-law, age 56, is self-employed in the construction field. His mother-in-law visited the United States once when her granddaughter was born in 2014 for approximately a month and a half. Applicant has limited contact with his father-in-law, but communicates with his mother-in-law approximately once every two months by either phone or video chat.<sup>13</sup>

Applicant's sister, age 44, has never been employed outside of the home. Her husband is employed as a graphic designer. Applicant communicates with her approximately once every two months by phone, and approximately once a month by text or social media.<sup>14</sup>

Since 2006, Applicant has travelled to Jordan to visit his family four times, most recently in 2013, and to Israel to visit his sister once in 2010. He does not have any current plans to travel to Jordan. His Jordanian-citizen brothers and parents reside in close proximity to each other, within a 10-minute drive from one another.<sup>15</sup>

Applicant maintains all of his earned assets in the United States. In 2013, as part of the equitable distribution of his estate among his children, Applicant's father gifted to Applicant two apartments located in Jordan. One is valued at approximately \$50,000 (Apt 1), and the other, which is also his parents' primary residence, \$90,000 (Apt 2). He does not value his gifted Jordanian assets over his earned U.S. assets. As they are neither financially or otherwise significant to him, Applicant has no interest in retaining these two properties. To that end, he placed Apt 1 for sale in 2013, and plans to sell Apt 2 once his parents are deceased. He would be willing to forfeit his interest in them sooner if necessary.<sup>16</sup>

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<sup>11</sup> See *also* Tr. at 39, 93-94.

<sup>12</sup> See *also* Tr. at 40, 94-97.

<sup>13</sup> See *also* Tr. at 99-101.

<sup>14</sup> See *also* Tr. at 41, 97-99.

<sup>15</sup> See *also* Tr. at 93, 102-107-116.

<sup>16</sup> See *also* Tr. at 50-52, 111-116.

Applicant has chosen to establish his career and life in the United States, and has no plans to return to live in Jordan. There are no job opportunities for him in his field in Jordan. He and his wife plan to raise their family in the United States, and as soon as he attains financial security, they will purchase their first home. He registered for the U.S. selective service in 2005, is a registered U.S. voter, and has served on a U.S. jury.<sup>17</sup>

### **Administrative Notice (Jordan)**

I have taken administrative notice of the U.S. Government's pronouncements concerning Jordan in 2016, as outlined in HE II and the documents appended thereto, including the following:

- The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy.
- The Jordanian government continues to infringe on citizens' privacy rights. Impunity remains widespread. The most significant human rights problems are restrictions on the freedom of expression, including detention of journalists, which limited the ability of citizens and media to criticize government policies and officials; citizens' inability change their government peacefully; and mistreatment and allegations of torture by security and government officials.
- The threat of terrorism remains a major concern.
- Jordan remains a key U.S. ally in countering terrorism and violent extremist ideology. Jordan's location in a tumultuous region makes it vulnerable to a variety of threats, yet also facilitates its regional leadership in confronting them.
- Jordan has advanced capabilities to detect, deter, and prevent terrorism within its territory, and has remained committed to securing its borders and denying safe haven to terrorists.
- Jordan's interagency anti-extremist strategy remains under-resourced and understaffed, its leaders are reticent to acknowledge domestic radicalization, including self-radicalizations, and its efforts to improve counter-radicalization in schools and mosques were rarely well coordinated across government agencies.

### **Administrative Notice (Israel)**

I have taken administrative notice of the U.S. Government's pronouncements concerning Israel in 2006, 2015, and 2016, as outlined in HE III and the documents appended thereto, including the following:

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<sup>17</sup> AE B, C, and I; Tr. 43-48.

- Although the United States has provided regular military support to Israel, there is a significant documented history of classified information and controlled technologies being illegally imported by private Israeli entities. Illegal technology transfers, even to private Israeli entities, are a significant concern because foreign government entities – including intelligence organizations and security services – have learned to capitalize on private-sector technology acquisitions.
- The U.S. Department of State warns all persons seeking to enter or depart Israel, the West Bank, or Gaza that they are subject to security screening, including prolonged questioning and physical searches, and may be denied entry or exit. Israeli security officials have also on occasion requested access to travelers' personal e-mail accounts or other social media accounts as a condition of entry. In such circumstances, travelers should have no expectation of privacy for any data stored on such devices or in their accounts.

### **Policies**

"[N]o one has a 'right' to a security clearance."<sup>18</sup> 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."<sup>19</sup> 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."<sup>20</sup>

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.

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<sup>18</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>19</sup> *Egan* at 527.

<sup>20</sup> EO 10865 § 2.

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.”<sup>21</sup> 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.<sup>22</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>23</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>24</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>25</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>26</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>27</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>28</sup>

## **Analysis**

### **Guideline B (Foreign Influence)**

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

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

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<sup>21</sup> EO 10865 § 7.

<sup>22</sup> See *Egan*, 484 U.S. at 531.

<sup>23</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>24</sup> See ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993).

<sup>25</sup> Directive ¶ E3.1.15.

<sup>26</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>27</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>28</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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 following disqualifying conditions under this guideline are potentially relevant:

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 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(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; and

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.

Applicant's direct ties to his parents, four brothers, sister, and in-laws establish AG ¶¶ 7(a) and 7(b), and his indirect ties to his in-laws through his wife establish AG ¶ 7(e). His interest in the two apartments gifted to him by his father establishes AG ¶ 7(f). The human rights and terrorism problems existent in Jordan and Israel, the U.S. Department of State's security concerns with respect to Israel's infringements on privacy rights, and the concerns regarding Israeli espionage against the United States establish a "heightened risk" with respect to both countries.

The following mitigating conditions under this guideline are established:

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.

Applicant chose to make the United States his permanent home over 11 years ago. He and his wife are both naturalized U.S. citizens. They plan to raise their U.S. born children in the United States. All of the assets of value to Applicant are in the United States. Applicant sought both of his post-graduate degrees from U.S. universities, and chose to begin and continue his career in the United States. None of his foreign family members has any security-significant connection to a foreign military or government. His father, Brother 1, Brother 1's three sons, Brother 1's daughter, and Brother 5 have their own connections to the United States as residents, citizens, or property owners. While Applicant has close ties to family who are citizens and residents of Jordan, including his sister who resides in Israel, his stronger ties are in the United States. Therefore, I conclude that Applicant would resolve any conflict of interest in favor of the U.S. interest. I find the nature and value of the two apartments in Jordan are such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure Applicant.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person and the "heightened risk" associated with Jordan and Israel, I conclude that Applicant has mitigated the foreign influence concerns raised by his family ties and assets. Accordingly, I conclude that 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

### **Conclusion**

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

Gina L. Marine  
Administrative Judge