



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



In the matter of:)
)
) ISCR Case No. 14-04209
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Elizabeth L. Newman, Esq.

09/15/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s mitigating information is insufficient to fully overcome the foreign influence security concerns under Guideline B. He failed to establish that it is unlikely he will be placed in a position of having to choose between the interests of his parents and the interest of the United States. He has lived in the United States for only six years. He has substantial liquid financial assets in the United States, but owns no property in the United States. His financial interests in the United States are outweighed by his property interests in Jordan. Eligibility for access to classified information is denied.

Statement of the Case

On September 27, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guideline B (foreign influence). The SOR was amended on March 2, 2015, adding a Guideline C (foreign preference) security concern.¹ Applicant answered the SOR on November 20, 2014, and the amended SOR

¹ The 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

allegation on March 10, 2015. (Appellate Exhibit 1) He requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 10, 2015, and reassigned to me on May 14, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 24, 2015, scheduling a hearing for May 15, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on May 27, 2015.

Procedural and Evidentiary Rulings

Applicant testified, presented three witnesses, and offered exhibits A through C. AE C was received post-hearing. The Government offered exhibits (GE) 1 through 4. GE 1 and 2, and AE A through C were admitted without objections. GE 3 is a request for me to take administrative notice of facts concerning the government of Jordan. GE 4 is the Government's discovery letter to Applicant. Both GE 3 and 4 were marked and attached to the record, but not admitted into evidence. Neither side objected, and I took administrative notice of facts concerning the government of Jordan outlined in the source documents and the administrative notice request.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.c. He denied SOR ¶ 2.a. His admissions are incorporated as findings of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 37-year-old senior program manager employed by a non-profit organization that does business with, or is sponsored by, U.S. endowments and organizations.

Applicant's father was born in what used to be Palestine territory, in an area that is now part of Israel. When Israel was created, his father was located in the West Bank, and was granted Jordanian citizenship. His father went to Russia to study, and married his mother, who was born in Russia. Applicant's oldest sister was born in Russia, his second sister was born in Algeria, and his third sister was born in Jordan. Applicant's father worked on his own business, and never served in the Jordanian military or had connections to the Jordanian government.

Applicant's mother left Russia at age 23. She only visited Russia once when she was 25 years old. She is currently 70 years old. She worked as a homemaker. His father is currently mentally ill, and his mother cares for his father. Applicant and his sisters provide financial support for their parents. Applicant sends his parents between \$4,000 and \$5,000 a year.

Applicant was born, raised, and educated in Jordan. His family is Christian, and he attended a Catholic high school. Applicant testified that he paid for his college

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

education by translating documents from English to Arabic. In 2004, he started working for non-profit organizations sponsored by U.S. endowments and organizations. He received his green card in 2006, and immigrated to the United States in 2009. He became a naturalized U.S. citizen in 2012. His current income is around \$105,000. He does not own any property in the United States, but stated that his net worth in the United States is around \$150,000 (investments and retirement accounts, and savings).

Applicant's current job requires him to travel frequently to the Middle East. He visits his parents every time he can. Because of his father's illness, Applicant maintains daily contact with his mother via telephone and emails. Between 2009 and 2012, Applicant travelled to Jordan to visit his parents on eight different occasions. After submitting his 2013 SCA, Applicant travelled twice to Jordan. In early 2013, Applicant used his Jordanian passport to travel to Jordan for his convenience. In early 2015, he used his U.S. passport to travel.

Applicant explained that he used his Jordanian passport to travel to Jordan because he was not aware of the security concerns it would raise. In March 2015, Applicant was made aware of the security concerns raised by his possession of a Jordanian passport, and he surrendered it to his facility security officer (FSO). His Jordanian passport expired in 2014, and he does not intend to renew it.

In 2005, Applicant purchased an apartment in Jordan. He lived in the apartment from 2005 to 2009, and rented it from 2009 to 2011. He was not been able to rent it again because of the political turmoil in the area. He paid off the apartment mortgage in 2013. Applicant estimates the current value of the apartment to be \$200,000. He stated that he hired two different realtors to help him sell the property. He also used two Jordanian friends to help him sell the property without success. When Applicant was made aware of the security concerns raised by his possession of property in Jordan, he transferred the title of the apartment to his mother. Because his parents have no income, he is still financially responsible for the apartment taxes and other expenses. Applicant also has a Jordanian bank account. Apparently, he has less than \$10,000 in the account because he no longer has to report it to the IRS.

Applicant testified that his father's siblings immigrated to the United States. His three sisters also immigrated to the United States, married U.S. citizens, and became naturalized U.S. citizens themselves. In 2009, Applicant and his siblings attempted to bring their parents to the United States, but it did not work out because of his father's mental illness. He requires extensive medical care, and Jordan provides free elderly medical care.

Applicant considers the United States his home, and he intends to retire here. He testified that he has no ties of loyalty toward Jordan, and his family has no historical connection with Jordan either because his mother was born in Russia and his father in Palestine. He averred that he has worked very hard and invested substantial resources to obtain his U.S. citizenship. Applicant has been in a stable relationship with a partner for more than four years. They have lived together since January 2015, and are integrating their financial resources. He prefers the United States over Jordan because

of the financial opportunities available, the liberal U.S. political tradition, and the rights and privileges that he enjoys in the United States. Except for his elderly parents, he does not have any other close relatives living in Jordan.

Applicant started working with his current employer in 2009. He is considered to be a successful and productive employee. He was promoted to a supervisory position and has received monetary awards. He is considered to be trustworthy, responsible, discrete, and conscientious about his responsibilities. His supervisor recommended his eligibility for a security clearance.

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, 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. 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.

The threat of terrorism in Jordan is considered to be high because of past terrorist activities against U.S. and government of Jordan targets in Jordan. The government of Jordan considers U.S.-Jordanian dual nationals to be Jordanian citizens subject to Jordanian laws.

The United States deeply values its long history of cooperation and friendship with Jordan, with which it established diplomatic relations in 1949. The United States appreciates the special 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 threatens the security of Jordan, the region, and the entire globe. U.S. policy seeks 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 key political and economic reforms that will secure a better future for the Jordanian people.

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 commonsense 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

Guideline B, 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.

The guideline indicates conditions that could raise a security concern and may be disqualifying AG ¶ 7 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
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's parents are citizens and residents of Jordan. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone may be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²

Applicant has frequent contacts and a close relationship of affection and obligation with his parents. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Jordanian agents or individuals such as terrorists and criminals operating in Jordan may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's relatives in Jordan create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly or through his parents in Jordan.

Applicant has a substantial property interest in Jordan. The value of his apartment and bank account in Jordan are greater than his declared net worth in the United States. He pays the taxes on the apartment.

AG ¶¶ 7(a) - 7(c) apply, and further inquiry is necessary about potential application of any mitigating conditions. The Government produced substantial evidence raising potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

AG ¶ 8 lists 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.

Applicant was born, raised, and educated in Jordan. He has worked for non-profit organizations doing business with or sponsored by U.S. endowments and organizations since 2004. He received his green card in 2006, and immigrated to the United States in 2009. He became a naturalized U.S. citizen in 2012.

Applicant has made the United States his home since 2009, and has been a productive U.S. citizen. He has strong affection and sense of obligation to his siblings living in the United States, and to his partner of four years with whom he has a stable relationship. He does not own any property in the United States, but has a net worth of around \$150,000 (investment, retirement, and bank accounts). Applicant recently owned real state in Jordan valued at around \$200,000, and maintains a Jordanian bank account with less than \$10,000. He provided the apartment to his mother; however, he still pays the taxes on the apartment.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his parents living in Jordan.

Although there is no evidence that Jordanian government agents, or other entities, have approached or threatened Applicant or his parents living in Jordan, he is nevertheless potentially vulnerable to threats, coercion, inducement, and manipulation made against him or his parents living in Jordan. We cannot rule out such a possibility in the future.

The threat of terrorism in Jordan is considered to be high. There is evidence of past terrorist activities against U.S. and government of Jordan targets in Jordan. It is possible that terrorists or criminals would attempt to coerce Applicant through his relatives living in Jordan, if they determined it was advantageous to do so. This places the burden of persuasion on Applicant to demonstrate that his contacts in Jordan do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connection to his parents.

In deciding whether Applicant's family members are in a position to be exploited, I considered Jordan's form of government. 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.

I note that the United States deeply values its long history of cooperation and friendship with Jordan. Notwithstanding, 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).

Applicant's evidence is insufficient to establish that it is unlikely he will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Applicant's parents are residents and citizens of Jordan. He has frequent contact with his parents and visits them as frequently as he can. Since 2009, he visited his parents ten times. If members of the community, terrorists, criminals, or corrupt government officials became aware of his work for U.S. interests and citizenship, his parents, friends, and extended relatives living in Jordan could be in danger or placed at unnecessary risk.

Applicant's contacts with his parents in Jordan create a heightened risk of foreign influence and exploitation. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his

relatives living in Jordan who might be coerced by terrorists, criminals, or governmental entities in that country.

Applicant professed that his loyalty and sense of obligation is to the United States. He averred that he has no loyalty to Jordan. Notwithstanding, his sense of obligation to his parents in Jordan is very strong. He has lived only six years in the United States, and owns no property here. On the other hand, Applicant recently transferred a \$200,000 apartment in Jordan to his mother and his bank account that are more valuable than his financial and property interests are in the United States.

I considered that Applicant unsuccessfully attempted to sell his apartment in Jordan, and that he then transferred ownership of the apartment to his mother. In light of his parents lack of income, and that they depend on Applicant and his siblings for their subsistence, I considered this transaction a strong manifestation of his affection for his mother and his obligation to her. Also, although his parents are elderly and retired, they still depend on the Jordanian government for their extensive medical care.

The record evidence fails to support a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his parents in Jordan.

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

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.

AG ¶ 10 indicates four conditions that could raise security concerns and may be disqualifying in 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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country;

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant became a naturalized U.S. citizen in 2012, and was issued a U.S. passport. He used his Jordanian passport, in preference of his U.S. passport, to travel to Jordan in 2013, after he became a U.S. citizen. He continued to use his Jordanian passport for his travel convenience.

Foreign preference disqualifying condition AG ¶ 10(a) is supported by the evidence. If this condition is not mitigated it would disqualify Applicant from eligibility to hold a security clearance.

AG ¶ 11 provides conditions that could mitigate the security concerns for foreign preference:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶¶ 11(b) and (e) are applicable. Applicant has expressed his willingness to renounce his Jordanian citizenship. His Jordanian passport is currently expired, and he surrendered his Jordanian passport to his FSO. Applicant testified he has no intention to renew his Jordanian passport. He mitigated the security concerns alleged under Guideline C.

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 Guidelines B and C in my whole-person analysis. I considered that Applicant has worked for non-profit organizations sponsored by U.S. endowments and organizations since 2004. He immigrated to the United States in 2009, and became a naturalized U.S. citizen in 2012. He has lived in the United States 6 years. Applicant has strong affection and a sense of obligation to his siblings and extended family members, and to his partner of four years, all of whom live in the United States.

Notwithstanding, considering the evidence as a whole, Applicant's mitigating information taken together is insufficient to fully overcome the foreign influence security concerns under Guideline B. Applicant's evidence failed to establish that it is unlikely he will be placed in a position of having to choose between the interests of his parents and the interest of the United States. He has lived in the United States for only six years. He has substantial liquid assets in the United States, but owns no property in the United States. His financial interests in the United States are outweighed by his property interests in Jordan.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried his burden of persuasion and the foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

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- 1.c:	Against Applicant

Paragraph 2, Guideline C:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

In light of all of the circumstances, 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