



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00331
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahyrn Hoffmann, Esq., Department Counsel  
For Applicant: Eric Eisen, Esq.

12/17/2014

**Decision**

LYNCH, Noreen A., Administrative Judge:

On March 18, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2014. A notice of hearing was issued on October 29, 2014, scheduling the hearing for November 25, 2014. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-F, which were admitted without objection. The transcript was received on December 5, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

## Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Jordan. The request and the attached documents are included in the record as HE I. The facts administratively noticed are set out in the Findings of Facts, below.

### Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.a through 1.k, with explanations.

Applicant, who is 38 years old, was born in Jordan. After attending high school in Jordan, Applicant went to Iraq to study for his undergraduate degree, but he did not like studying there. After one year, Applicant left Iraq and returned to Jordan. From Jordan, applicant went to Israel, where he finished his undergraduate degree in January 2000. (Tr. 26 ) He immigrated to the United States in April 2000 because he was awarded a scholarship. Applicant's first wife sponsored him for his U.S. citizenship. He obtained a scholarship to an American university. He received his Ph.D in astrophysics. Applicant became a naturalized citizen in May 2007. After divorcing his first wife in 2007, Applicant married his second wife in 2009. (GX 1) Applicant worked for his current employer, as a professor, since July 2012. (GX 1) This is his first request for a security clearance with the DOD.<sup>1</sup>

The SOR alleges foreign influence security concerns about Applicant's spouse, mother, father in-law, mother-in-law, siblings, and siblings-in-law. They are citizens and residents of Jordan. (GX 1) Applicant has one sister and a brother-in-law who are citizens and residents of the West Bank. One sister-in-law lives in Kuwait, but is a Jordanian citizen.

Applicant's current wife is a dual citizen who holds a Jordanian passport. She became a U.S. citizen in October 2012. She holds a Jordanian passport, dated 2013. (AX F) She also holds an American passport. Applicant's wife is willing to destroy the Jordanian passport but she cannot return it to Applicant's Facility Security Officer (she is not an employee) and she is concerned about relinquishing it to the Jordanian government because it might draw attention to Applicant.

Applicant's wife maintains contact with her mother and father by telephone. She speaks to them about once a week. (Tr. 104) None of her family know about the nature of Applicant's work.

Applicant's father, who was a medical doctor, is deceased. His mother is a citizen and resident of Jordan. However, she has a green card and spends time in the United States with Applicant. (Tr. 53, AX E) When his mother returns to Jordan,

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<sup>1</sup>Applicant stated that he obtained a position of public trust based on a 2007 application. (GX 3)

Applicant speaks to her about once a week. (Tr. 61) She intends to become a U.S. citizen. (Tr. 89) She has no connection to the Jordanian government.

Applicant's brother is a Jordanian citizen and resident. Applicant's brother has an educational consulting firm. Applicant speaks to him about once every other month. Applicant has three sisters who are Jordanian residents and citizens. Applicant has a sister who is a resident of the West Bank. This sister is still a Jordanian citizen. Applicant speaks to his sisters about four times a year. (Tr. 56)

Applicant's father-in-law and mother-in-law are Jordanian citizens and residents. His wife maintains contact with them. They do not know anything about the nature of Applicant's work. Applicant's father-in-law is retired and has no connection with the Jordanian military or the government. Applicant saw them on his visit to Jordan in 2013.

Applicant has three brothers-in-law who are Jordanian citizens and residents. He has a brother-in-law who is a citizen and resident of the West Bank. They have no connection to the military or the Jordanian government.

Applicant has a brother-in-law who is a Syrian citizen and resides in Jordan. He does not have much contact with him, and last saw him when he was in Jordan in 2013.

Applicant has a sister-in-law who is a Jordanian citizen and resides in Kuwait. Applicant's wife has sponsored her for U.S. citizenship. (AX F, Tr. 59)

Applicant does not maintain contact with any extended family members in Jordan. Nor does he maintain any contact with friends or former students. (Tr. 59) He renounced his Jordanian citizenship and destroyed his Jordanian passport in August 2007. (GX 2)

Applicant and his wife have traveled to Jordan several times in the past few years for medical reasons. They sought help from a fertility clinic. After numerous attempts in the United States and spending thousands of dollars, they decided to try In vitro fertilization (IVF)/VF in Jordan because the treatment is quite affordable. (Tr. 44) The last trip was in July 2013. (Tr. 70) Applicant notified his employer about the trip.

Applicant travels to Jordan and other countries for work conferences and meets individuals from around the world. He disclosed the contacts on his security clearance application. The nature of his scientific work involves collaboration with many foreign nationals. The contacts are for research purposes.

Applicant and his wife have U.S. bank accounts. He earns approximately \$130,000 annually. (Tr. 103) Applicant has no assets or property in Jordan. (GX 2) He has a 401(k) valued at about \$70,000.

Applicant submitted eight letters of recommendation from former professors, colleagues, and project managers. Each attests to his leadership skills, dependability, and ethics. A professor who has known Applicant for at least ten years attests to is

outstanding work effort and creativity. He noted that Applicant is willing to help when needed. (AX A)

A former colleague describes Applicant as “thoroughly American.” He appreciates the freedoms that are available to him both professionally and personally in the United States. Applicant has worked many years without incidents that would cast any doubt on his personal discipline or loyalty. Applicant has pursued his professional life through many years of education and postdoctoral fellowships. (AX B)

Applicant’s current employer noted that Applicant has been involved with various areas of defense programs and wrote several classified reports. Dr. A states Applicant has the highest integrity. Applicant is the key man on at least two projects. His current manager states that Applicant is greatly respected within the program. He has an outstanding research record covering several areas. (AX C)

A retired Naval Officer and research staff member who knows Applicant states that he has observed nothing in Applicant’s character, actions, or words that give him concern about Applicant’s eligibility for a security clearance. (AX D)

Applicant is involved in his community. He votes in local and national elections. He enjoys the opportunities that are available in the United States. He has no desire to return to Jordan or the Middle East to live.

## **Administrative Notice**

### **Jordan**

The Hashemite Kingdom of Jordan is a constitutional monarch ruled by King Abdullah II. According to the State Department’s 2013 Human Right Report, Jordan’s three most significant continuing human rights problems are: citizens’s inability to change their government peacefully; mistreatment and allegations of torture by security and government officials; and restrictions on freedom of expression and freedom of assembly.

The U.S. Department of State assesses the threat of terrorism in Jordan as high. Terrorist groups have employed Improvised Explosive Devices in attacking Americans and other foreign nationals. The Department of State remains concerned about the continued threat of terrorist attacks, demonstrations, and other violent actions against U.S. citizens and interests overseas. Travelers to Jordan should be cognizant of the fact that Al-Qaida in Iraq affiliates have carried out terrorist activities against U.S. and Jordanian interests there.

The government of Jordan considers U.S.-Jordanian dual nationals to be Jordanian citizens. Jordanian authorities may not inform the U.S. embassy of arrests, detentions, or accidents involving such dual citizens. Jordanian law subjects dual citizens to certain obligations, for example, males under the age of 37 are required to register for service in the Jordanian military.

Under Jordanian law, any adult male may prevent a female or child relative from leaving Jordan by registering a hold on their travel with the Jordanian authorities. This is possible even if the child or woman hold only U.S. nationality. Jordanian authorities consider disputes surrounding travel holds as private family matters, and the Embassy is limited in its ability to intervene.

In security clearance adjudications, the identity of the country should be considered along with other considerations such as whether the country is known to target U.S. citizens to obtain protected information or is associated with terrorism. Jordan is a constitutional monarchy ruled by a king, with the assistance of a Council of Ministers selected by the king, and a bicameral National Assembly. The country has followed a pro-western policy of close relations with the United States for at least six decades, and is a strategic partner in the war on terror.

### **Gaza-West Bank**

Following the mobilization of forces along Israel's border and the outbreak of the 1967 Six-Day War between a number of Arab states and Israel. Israel seized the West Bank, Gaza Strip, and East Jerusalem. Israel's occupation of the West Bank and Gaza Strip remains to the present day. In 1994, the Palestinian Authority (PA) was given limited self-rule over the West Bank and Gaza Strip, subject to supervening Israeli control. In 2007, Hamas, a designated Foreign Terrorist Organization (FTO), took over the Gaza Strip and has exercised *de facto* control over the territory to the present day. The Fatah-led PA exercises limited civil and administrative control over the West Bank. However, the division of responsibilities and jurisdictions between the PA and Israel in the West Bank is complex and subject to change. On November 29, 2012, the United Nations voted to "accord to Palestine non-member observer State status." The United States is concerned that this unilateral move by the Palestinians may further impede already stalled negotiations over a two-state solution.

The State Department urges U.S. citizens to exercise caution when traveling to the West Bank. Several groups operating in Israel, the West Bank, and Gaza have been designated as FTOs, such as Hamas. The threat posed by terrorist groups operating in the occupied territories, including the West Bank, is significant. Foreigners, including U.S. citizens, have been kidnapped and killed in the past. Many of these groups are openly hostile to the United States and U.S. interest. Furthermore, travel to and out of the West Bank by U.S. citizens of Palestinian, Arab, or Middle Eastern descent may result in detention and prolonged questioning, without being provided consular access. In addition, the State Department reports serious human rights problems throughout the occupied territories, to include arbitrary arrest and torture, often with impunity; some of which was reportedly committed by PA security forces on detainees. Corruption and poverty remain significant problems in the region.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>2</sup> The burden of proof is something less than a preponderance of evidence. <sup>3</sup> The ultimate burden of persuasion is on the applicant. <sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." <sup>5</sup> "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." <sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## Analysis

### Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

A disqualifying condition may be raised by "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." AG ¶ 7(a). A disqualifying condition also may be raised by "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." AG ¶ 7(b).

Applicant's mother, in-laws, siblings, and Applicant's wife's family are citizens and residents of Jordan. Applicant and his wife maintain contact with them. Security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his immediate extended family. Based on this evidence, AG ¶¶ 7(a) and 7(b) are raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a) and (b) the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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<sup>7</sup> *Id.*

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). Nevertheless, 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. 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 operations against the United States, or the foreign country is associated with a risk of terrorism.

While there is no evidence that intelligence operatives or terrorists from Jordan seek or have sought classified or economic information from or through Applicant, or his mother, siblings, or other family members living in Jordan, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Jordan has a significant problem with terrorism. Applicant’s relationship with his mother, siblings and other family members create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist family members in those countries by providing sensitive information.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG ¶ 8(b) can mitigate concerns when “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.” AG ¶ 8(c) can mitigate concerns if “contact of 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.”

AG ¶ 8(a) and 8(c) have limited applicability. Applicant’s mother and siblings do not know the nature of Applicant’s work. He keeps in touch with them by phone. He

talks to his mother more than his siblings. His loyalty and connections to his family living in Jordan are positive character traits. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is “little likelihood that [his relationships with relatives living in Jordan] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has significant connections to the United States. He has lived in the United States since 2000 and has pursued his academic career in the United States. He is deeply invested in his work. He was naturalized in 2007. He married his second wife who is a dual citizen but is willing to surrender her Jordanian passport. Applicant has no children.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family living in Jordan. His mother lives in the United States part of the year and has a green card. She intends to become a U.S. citizen. He communicates with his mother by phone once a month or more and with his siblings once or twice a year. There is no evidence, however, that terrorists, criminals, the Jordanian government or those conducting espionage have approached or threatened Applicant, or his family. As such, there is a reduced possibility that Applicant or his family living in Jordan would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in Jordan is from terrorists and other lawless elements and not the Jordanian Government.

In sum, Applicant’s connections to his mother, siblings, and other family members living in Jordan are significant. He is close to his mother and does sometimes communicate with his siblings by phone. He travels for work and has gone to Jordan for medical reasons in 2013. Applicant’s connections to the United States are strong. He has no desire to return to Jordan or the Middle East to live. He is committed to his personal and professional life in the United States. His wife is a naturalized U.S. citizen who lives with him in the United States. There is substantial mitigation in this case. Applicant spoke about his undivided loyalty to the United States. His connections to the United States heavily outweigh his connections to his family in Jordan. He has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are mitigated under Guideline B. Even if security concerns are not mitigated under Guideline B, they are mitigated under the whole-person concept, *infra*.

### **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 an applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a naturalized U.S. citizen. He is an educated man, who lives with his wife in the United States. His mother lives in the United States part of the year and intends to become a U.S. citizen. His financial assets are in the United States. Applicant has strong personal and professional ties to the United States.

A Guideline B decision concerning Jordan must take into consideration the geopolitical situation and dangers there. The country is dangerous because of violence from terrorists and other lawless elements. Terrorists continue to threaten Jordan, the interests of the United States, and those who cooperate and assist the United States. Jordan does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Jordan are allies in the war on terrorism. Jordan and the United States have close relationships in diplomacy and trade. They also have profound policy disputes.

Applicant's mother-in-law, father-in-law and siblings are citizens and residents of Jordan. He maintains contact with them. His connections to his family in Jordan make Applicant more vulnerable as a target of coercion by lawless elements in Jordan. His family in Jordan will be at a greater risk if his clearance is granted. They have no knowledge of Applicant's work. However, his primary duty is to his own wife who is a U.S. citizen. He has no desire to live in Jordan or the Middle East. His entire professional career is in the United States. He will seek advice to resolve any issues that may arise in the future with the help of his employer. For all these reasons, Applicant has mitigated the security concerns under foreign influence.

