

DATE: November 30, 2007

In re:	)	
	)	
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-----	)	ISCR Case No. 06-25979
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

James E. Corl, Jr., Esq.

**SYNOPSIS**

Applicant’s close ties to family members who are citizens and residents of Morocco and her travel to that country create security concerns which she has failed to overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On February 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR, which is in

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

essence the administrative complaint, alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on March 14, 2007, admitted all SOR allegations and requested a hearing.

The case was assigned to another administrative judge on June 12, 2007, and reassigned to me on October 2, 2007, due to caseload considerations. A notice of hearing was issued at the request of the originally assigned administrative judge on September 26, 2007, scheduling the hearing for October 30, 2007. I conducted the hearing as it was originally scheduled.

The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6. GE 1 and 2 were admitted into the record and administrative notice was taken of the relevant information contained in GE 3-6 without objection. Applicant testified, called five witnesses to testify on her behalf, and submitted four documentary exhibits that were marked as Applicant's Exhibits (AE) 1-4, and admitted into the record without objection. The transcript was received on November 14, 2007.

### **PROCEDURAL MATTERS**

A notice of hearing was issued at the request of the administrative judge initially assigned to this case on July 20, 2007, scheduling a hearing on September 21, 2007. The file contains a letter from Applicant's attorney, dated July 17, 2007 (Appellate Exhibit [App. Ex. I]), indicating he would be representing Applicant and would be available for the hearing date of September 21, 2007. While the file does not contain any other documents to indicate why the hearing was not held on September 21, 2007, the parties agreed on the record there had been one or more conference calls with the originally assigned administrative judge wherein a continuance was agreed upon to October 30, 2007 (Tr. pp. 11-12).

After hearing all evidence in this case, on my own motion and without objection by either party, I amended SOR subparagraph 1.b by striking the word "Base" and subparagraph 1.c by inserting a comma after the date "May 2001," by striking the word "and," by inserting a comma after the date "September 2004" and by inserting the phrase "and for three weeks during July to August 2007."

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of facts.

Applicant is a married 35-year-old woman. She was born in Morocco and was solely a Moroccan citizen until she became a naturalized United States citizen in March 2004. She obtained a United States passport in June 2004. Applicant returned her previously issued Moroccan passport to the Moroccan Consulate General in New York in December 2005, and, at the same time by letter, notified the Consulate General she was immediately renouncing her Moroccan citizenship. Applicant requested confirmation of receipt of the passport from the Consulate General, but never received a response.

Applicant is employed as an engineer by a defense contractor with skills in a particular field that are difficult to find. Those skills and her experience and knowledge in her field of expertise make her a valuable asset to her employer. She held an interim security clearance for approximately 18 months after being hired by this employer without any adverse information being reported. Applicant's character witnesses, consisting of supervisors and co-workers, consider her to be dependable, professional, diligent, conscientious, detail oriented, and very security conscious. She has proven herself to be a reliable employee with exemplary work habits.

Applicant met her husband, a dual U.S. and Moroccan citizen, while he was visiting in Morocco in 1997. They were married in Morocco in either September 1997 or September 1999.<sup>2</sup> They have two children, ages six years and 18 months. Although Applicant testified she considers her children to be solely U.S. citizens, GE 4 indicates that children born to Moroccan fathers are considered by Moroccan law to be citizens of Morocco. Applicant's husband immigrated to the U.S. sometime in the 1990s after marrying his cousin who was a U.S. citizen. He became a U.S. citizen about nine years ago. He has been unemployed since October 2004, due to a back injury sustained in an automobile accident and receives approximately \$620.00 per month as a disability payments. He has used his U.S. passport for travel to Morocco.

Applicant completed her undergraduate, graduate and doctoral studies in Morocco. She was awarded a PhD in electronics from a Moroccan university in April 2001. Although Applicant immigrated to the U.S. in 1999, she returned to Morocco to reside from October 2000 until May 2001, to complete work on her doctoral degree. She was unemployed from November 2001 until January 2002, and worked as a teacher from September 2001 until November 2001. From January 2002 until May 2005, she worked as an adjunct instructor at a university in the U.S. Applicant has worked for her present employer since 2005.

Applicant's parents are citizens and residents of Morocco. Her father is a retired clerk and her mother has never worked outside the home. They subsist on a pension her father receives, the income from a small store he operates, the \$600.00-700.00 Applicant sends them annually, and on additional financial assistance provided by her siblings. Applicant has weekly to bi-weekly telephone contact with her parents and with her sister who resides with them. The only asset of any value owned by her parents is the house in which they live. Applicant estimated she will inherit about \$5,000.00 as her share of that house when her parents die.

Applicant has a brother who is career officer in the Moroccan Air Force. His rank is commander and he is stationed at a base in Morocco. Applicant has three additional brothers and two sisters who are citizens and residents of Morocco. A fifth brother resides in Spain. Her three brothers who reside in Morocco are all employed as teachers. The brother who resides in Spain formerly did home repair work but was unemployed as of the date of the hearing. One of her sisters resides with and cares for Applicant's elderly parents. The other sister is a teacher. With the exception of the sister who resides with her parents, Applicant has sporadic telephone and/or e-mail contact with her other siblings about once every other month.

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<sup>2</sup> September 1997 is listed in GE 1. September 1999 is listed in GE 2.

Applicant's mother-in-law and father-in law are also citizens and residents of Morocco. They are retired and divorced. Her mother-in-law never worked outside the home and presently is supported by a son who lives with her and her other children who reside in Spain. Applicant's father-in-law is retired from a foreign military service other than the Moroccan military.

In addition to the time she resided in Morocco to complete work on her doctorate, Applicant visited there from July to September 2000, August to September 2004, and for three weeks from July to August 2007. Other than the trip to complete her schooling, Applicant's travels to Morocco were solely for the purpose of visiting relatives.

Applicant and her husband own a house in the U.S. She testified the house is not mortgaged and is valued at between \$30,000.00 and \$40,000.00. The house is located in the city where she previously resided and is presently being occupied by a friend. Applicant and her husband live in an apartment they rent for \$735.00 per month. Her salary is \$62,000.00 annually. She has money withheld from her pay that is deposited in an educational account for the benefit of her children when they reach age 18. The only thing Applicant owns in Morocco is a small savings account for her use when she travels there and which currently has about a \$200.00 balance.

The following information is of record concerning Morocco:

Morocco is a constitutional monarchy with a Parliament and an independent judiciary; however, ultimate authority rests with the king.

\* \* \*

A series of terrorist bombings took place in Casablanca on May 16, 2003. Although U.S. Government facilities were not the target of the Casablanca attacks (and no American were killed or injured), the potential for violence against American interests and citizens remains high in Morocco. In 2006, Moroccan authorities disrupted groups seeking to attack U.S. or Western-affiliated targets, making numerous arrests of individuals associated with international terrorist groups. There are indications that such groups still seek to carry out attacks in Morocco. . . . (GE 4)

Morocco is a moderate Arab state which maintains close relations with Europe and the United States. . . . It contributes consistently to UN peacekeeping efforts on the continent.

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Morocco was the first Arab state to condemn Iraq's invasion of Kuwait in 1990, and sent troops to help defend Saudi Arabia. . . . Morocco has supported efforts to stabilize Iraq following the downfall of Saddam Hussein.

\* \* \*

Morocco was among the first Arab and Islamic states to denounce the September 11, 2001 terrorist attacks in the United States and declare solidarity with the American people in the war against terror.

\* \* \*

Morocco was the first country to seek diplomatic relations with the Government of the United States in 1777, and remains one of our oldest and closest allies in the region. . . . As testament to the special nature of the U.S.-Moroccan relationship, Tangier is home to the oldest U.S. diplomatic property in the world, and the only building on foreign soil that is listed in the U.S. National Register of Historic Places, the American Legation in Tangier (now a museum).

U.S.-Moroccan relations, characterized by mutual respect and friendship, have remained strong through cooperation and sustained high-level dialogue. King Hassan II visited the United States several times during his reign as King, meeting with Presidents Kennedy, Johnson, Carter, Reagan, Bush, and Clinton. King Mohammed VI has continued his father's tradition; he made his first trip to the U.S. as King on June 20, 2000. Prime Minister Jettou visited Washington in January 2004, and King Mohammed came to the United States in July 2004. . . .

As a stable, democratizing, and liberalizing Arab Muslim nation, Morocco is important for U.S. interests in the Middle East. Accordingly, U.S. policy toward Morocco seeks sustained and strong engagement, and identifies priorities for reform, conflict resolution, counterterrorism cooperation, and public outreach. (GE 3)

Citizens did not have the right to change fully their form of government. Reports of torture by various branches of the security forces persisted. Prison conditions remained below international standards. Reports of arbitrary arrests, incommunicado detentions, and police and security force impunity continued. Judicial independence from the executive branch of the government remained a problem. The government restricted freedoms of speech, press, and religion. Trafficking in persons continued, and child labor, particularly in the unregulated and informal sector, remained a problem. Security forces disbanded, sometimes with excessive force, monthly demonstrations by unemployed university graduates in front of the parliament. (GE 6)

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline

B, pertaining to foreign influence, with its respective disqualifying and mitigating conditions is most relevant in this case.

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### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup>

### **CONCLUSIONS**

Foreign Influence. 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

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

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.

Security clearance decisions are not based upon loyalty determinations. Instead, the issue is whether it is clearly consistent with the national interest to grant a security clearance in a particular case. No suggestion has been made that Applicant is anything but a loyal, honorable, and faithful American citizen. No assertion has been made that her foreign relatives or in-laws have any intention of performing any act that could cause harm to the United States. However, the analysis does not stop there.

Applicant met her husband, a dual U.S. and Moroccan citizen, while he was visiting in Morocco in 1997. They were married in Morocco, in either 1997 or 1999. Applicant immigrated to the United States in 1999, became a naturalized U.S. citizen in March 2004, and obtained a U.S. passport in June 2004. She has two minor children who are dual U.S. and Moroccan citizens based upon their father's Moroccan citizenship. Although Applicant has surrendered her Moroccan passport and attempted to renounce her Moroccan citizenship, she has not received the confirmation she requested that the passport was received and accepted.

Applicant completed her undergraduate, graduate, and doctoral studies in Morocco. After immigrating to the United States, Applicant returned to Morocco from October 2000 to May 2001 to complete work on her doctorate. Additionally, she vacationed and visited with relatives in Morocco from July to September 2000, August to September 2004, and for three weeks during July to August 2007.

Applicant's mother, father, mother-in-law, father-in-law, four brothers and two sisters are citizens and residents of Morocco. One of her brothers is a senior career officer in the Moroccan Air Force who is stationed at an air base in Morocco. Her father-in-law is retired from another foreign military service. Applicant has frequent and regular telephonic contact with her parents and a sister who resides with the parents. She has less frequent and somewhat irregular telephonic and/or e-mail contact with her other siblings. Applicant sends her parents between \$600.00 and \$700.00 annually.

Applicant's husband has been unemployed for several years due to an injury sustained in an automobile accident. She held two teaching jobs and experienced a short period of unemployment before being hired by a defense contractor in 2005. Applicant quickly gained a reputation for being a valued and trusted employee with the defense contractor and has impressed her supervisors and co-workers with her work ethic and security consciousness.

Applicant's annual salary is \$62,000.00. Her husband receives about \$620.00 monthly as a disability payment. Applicant and her husband own a house in the U.S. that she values at somewhere between \$30,000.00 and \$40,000.00. They do not reside in the house but instead have a friend living there while they pay rent in the amount of \$735.00 per month for an apartment in which they reside. Applicant has some savings from payroll withholdings in an educational account she established for the benefit of her children. Applicant maintains a savings account in Morocco for her use while visiting there that currently has a small balance of about \$200.00.

The record is devoid of any information to indicate the government of Morocco has in the past or will in the future target U.S. interests or U.S. citizens for purposes of data collection or in any other way inimical to U.S. security interests. However, the same cannot be said for terrorist and/or other anti-American organizations operating within Morocco. As recently as 2006, groups seeking to attack U.S. or Western-affiliated targets were found to be operating in Morocco. The U.S. State Department has noted: “There are indications that such groups still seek to carry out attacks in Morocco.” (GE 4)

As a result, Applicant’s close ties to her relatives and in-laws who are citizens and residents of Morocco, and her repeated travel to Morocco raise security concerns under disqualifying conditions 7(a): *contact with a foreign family member . . . 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*; 7(d): *sharing 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 7(I): *conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*.

Applicant immigrated to the U.S. less than ten years ago and has only within the past four years become a U.S. citizen. She has traveled back to Morocco on several occasions since immigrating to the U.S. and after becoming a U.S. citizen. She may or may not still be considered by Morocco to be a Moroccan citizen. Her husband and children are dual citizens of the U.S. and Morocco. Applicant’s relationship with her parents and at least some of her siblings is obviously close as evidenced by her frequent contact with them and her travels with her husband and children to Morocco to spend time with them. Thus, mitigating conditions 8(a): *the nature of the relationships with foreign persons, the country in which these persons are located, . . . 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 . . . and the interests of the U.S.*; 8(b): *there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person . . . 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*; and 8(c): *contact or communication with foreign citizens is so casual and infrequent there is little likelihood that it could create a risk for foreign influence or exploitation* do not apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. Indeed, the “whole person” concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against her. Accordingly, Guideline B is decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline B:                      Against Applicant

Subparagraphs a-d: Against Applicant

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**DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro  
Administrative Judge