

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 51-year-old lead member of the engineering staff employed by a defense contractor. His mother, two brothers, two sisters, mother-in-law, two sisters in law, four brothers in law, plus all of their children and spouses, are citizens and residents of Algeria. He failed to show there is little likelihood that his relationship with his family could create a risk for foreign influence or exploitation. He also holds an Algerian passport that is valid until March 2009. He has used this passport four times since becoming a U.S. citizen to travel to Algeria. His conduct is indicative of a foreign preference because he is exercising the rights of an Algerian citizen. He failed to mitigate the security concerns about foreign preference and foreign influence. Clearance is denied.

CASENO: 07-00715.h1

DATE: 09/28/2007

DATE: September 28, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 07-00715
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 51-year-old lead member of the engineering staff employed by a defense contractor. His mother, two brothers, two sisters, mother-in-law, two sisters in law, four brothers in law, plus all of their children and spouses, are citizens and residents of Algeria. He failed to show there is little likelihood that his relationship with his family could create a risk for foreign influence or exploitation. He also holds an Algerian passport that is valid until March 2009. He has used this passport four times since becoming a U.S. citizen to travel to Algeria. His conduct is indicative of a foreign preference because he is exercising the rights of an Algerian citizen. He failed to mitigate the security concerns about foreign preference and foreign influence. Clearance is denied.

## STATEMENT OF THE CASE

On September 23, 2005, Applicant submitted a Security Clearance Application (SF 86), (e-QIP) version.<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on April 13, 2007, detailing the basis for its decision – security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preferences) of the Directive. The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the Guidelines are to be used in all cases when the SOR is dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing on May 20, 2007, and elected to have a hearing before an administrative judge. DOHA assigned the case to me on August 3, 2007, and issued a Notice of Hearing on August 28, 2007. Applicant filed a motion for continuance on August 22, 2007, which was denied the same day. I convened a hearing on September 12, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The government offered two exhibits, marked as Exhibits 1-2. Applicant offered nine exhibits, marked as Exhibits A-I. All exhibits were admitted without objection. I kept the record open until September 24, 2007, to allow Applicant the time to file additional documents. On the afternoon of September 24, 2007, Applicant faxed a motion requesting additional time, because he had only received the transcript that day. The motion was denied because he was given 12 additional days to supplement the record, his having the transcript was not required for him to prepare and file evidence discussed at the hearing, and he waited until the very last minute to file his motion. DOHA received the transcript (Tr.) on September 20, 2007.

## PROCEDURAL RULINGS

### **Administrative Notice**

Department Counsel requested administrative notice of the facts in Administrative Exhibits A1 through A11. Applicant stated he had no objection and the administrative exhibits were admitted.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>2</sup> The most common basis for administrative notice at ISCR proceedings, is to notice

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<sup>1</sup>Government Exhibit 1 (Security Clearance Application (SF 86), dated September 23, 2005).

<sup>2</sup>See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)).

facts that are either well known or from government reports.<sup>3</sup> I took administrative notice of various facts derived from Administrative Exhibits A1 through A11, as indicated under subheading “Algeria” of this decision.

### **FINDINGS OF FACT**

Applicant admitted the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old lead member of the engineering staff employed by a federal contractor.<sup>4</sup> He is married and has three children. He emigrated to the United States in 1977. He became a naturalized citizen in 2000, and his wife in 2005.<sup>5</sup> He holds a Ph.D. in Electrical Engineering from an American university. He has had no military service, and this is his first application for a security clearance.<sup>6</sup>

Applicant’s mother, age 81, is a citizen and resident of Algeria. She lives in an apartment that he purchased for her. He and his family also stay there when they have traveled to Algeria. His wife also stayed there for a period of time while she was waiting for her U.S. immigration papers to be approved. She is retired living on a pension from the government. The property is in Applicant’s name, but his mother pays the annual real estate taxes.<sup>7</sup>

Applicant’s older brother, a citizen and resident of Algeria, has a law degree, has practiced law, taught at a university, and is an elected representative in the national assembly. His wife also has a law degree, but presently is a housewife. They have six children, two or three attending a university. Applicant has contact with him, about six times a year, usually during religious holidays, talking about each other’s families. He last saw his brother in 2006, when he traveled to his father-in-law’s funeral.<sup>8</sup>

Another brother, also a citizen and resident of Algeria, teaches computer science at a university. He is married, his wife is a teacher, and they have three children, all under the age of 19.<sup>9</sup>

Applicant sister a citizen and resident of Algeria, is married, and has six or seven children. Her husband is retired, but formerly worked as a custodian at a university. She is a housewife. His

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<sup>3</sup>See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing 15 types of administrative notice).

<sup>4</sup>Tr. at 18, 21.

<sup>5</sup>Id. at 18-20.

<sup>6</sup>Id. at 20.

<sup>7</sup>Id. at 23-27.

<sup>8</sup>Id. at 28-32.

<sup>9</sup>Id. at 32-34.

last sister, a housewife, is also a citizen and resident of Algeria. She is married, and her husband formerly did construction work in a European country, but is now retired. He believes that his brother-in-law receives a pension from his company.<sup>10</sup>

Applicant's mother-in-law, lives with one of her sons. One sister-in-law, a housewife, is married and her husband teaches at a high school. A brother-in-law teaches at the university, and Applicant's wife talks to him, maybe six times a year. His wife talks with her mother frequently to inquire about her health. Another brother-in-law works in construction. Another brother-in-law teaches at a university, and his final brother-in-law is a high school principal. Another sister-in-law is a housewife. All of these persons are citizens and residents of Algeria.<sup>11</sup>

Applicant saw most of his and his wife's family when he and his wife returned to Algeria in 2006 for his father-in-law's funeral. During part of the trip, he used his Algerian passport. His family traveled to Algeria in 2004 and December 2001. He used his Algerian passport to enter and exit the Algeria, and his U.S. passport to exit and enter the United States.<sup>12</sup> He maintains the Algerian passport for his own convenience, and it expires on March 15, 2009.<sup>13</sup> He was unwilling to renounce his Algerian citizenship.<sup>14</sup>

Applicant and his wife own a home in the United States, his wife does not work outside the home, he votes in US elections, he has a 401(k) plan with his employer, checking and savings accounts, he owns mutual funds, and he participates in a professional association. He has attended some of the parent-teacher group meetings at his children's school.<sup>15</sup>

Applicant's manager submitted a statement about him, having known Applicant since he joined the company in September 2005. He characterizes Applicant as a "dedicated and conscientious employee," and has significantly contributed to several programs. He has received only positive feedback from Applicant's colleagues and team leads for which he has worked. Applicant is described as technically capable, dedicated to the programs he is assigned, and a solid team player who possesses excellent interpersonal and communications skills. "He keeps me informed of his schedule and progress on the programs to which he is assigned, and is always willing to help where needed. He is a person of strong character and an upstanding individual."<sup>16</sup>

Applicant made the following statement:

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<sup>10</sup>*Id.* at 34-36.

<sup>11</sup>*Id.* at 36-41.

<sup>12</sup>*Id.* at 42-44.

<sup>13</sup>*Id.* at 45-46.

<sup>14</sup>*Id.* at 50.

<sup>15</sup>*Id.* at 46-49.

<sup>16</sup> Applicant's Exhibit A (Letter from Applicant's Manager, dated September 10, 2007).

It was by choice that I decided to become a U.S. citizen. It was by choice that I decided to raise my family here. The fact that I was born in Algeria, and have inherited the citizenship from my parents is something that I was just born with. I mean, when it came to make choices, I clearly made my choices by staying here and becoming a U. S. citizen and raising my family here. As far as the family links in Algeria, those also are inherent issues that naturalized US citizens would have. The fact that I still have siblings and a mother that live there, that is not something that I can do much about. As a matter of fact, quite a few of them would want nothing better than to emigrate here, but that's not a possibility. One of the requests that we get every now and then from some of these people is applying or helping them apply for the DV program, which is the immigration program, so they have no ill feelings toward the United States. One of the popular places in the capital of Algeria is named after Senator Kennedy, because of the esteem that they have for him there. As I pointed out earlier, I've been here for 30 years, I got all my degrees here, I've been working for 16 to 17 years in the industry, and I haven't had any problems or issues that could be detrimental to the interests of this country.

## ALGERIA

Algeria is a multi-party constitutional republic that has suffered from domestic terrorism throughout the 1990s and into the present<sup>17</sup>. The Algerian government declared a state of emergency in 1992, which remains in effect to the present day, due to what government authorities call "persistent terrorism."<sup>18</sup> Although making modest efforts toward democratic progress, Algeria's 15-year-old state of emergency, has been reportedly used to justify governmental abuses of human rights.<sup>19</sup> According to a 2006 United States Department of State report on human rights practices in Algeria, the government continued to fail to account for thousands of persons who disappeared in detention in the 1990s.<sup>20</sup> Further, there were other significant human rights violations regarding abuse and torture, corruption and lack of government transparency, official impunity, prolonged pre-trial detention, as well as other due process issues.<sup>21</sup> Restrictions on civil liberties such as privacy, freedom of speech, press, assembly, association and movement were also recorded, as were limitations on religious freedom, including increased regulation of non-Muslim worship.<sup>22</sup> Gender

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<sup>17</sup>*Consular Information Sheet - Algeria*, United States Department of State, dated March 7, 2007, at 1; *Background Note: Algeria, Bureau of Near Eastern Affairs*, United States Department of State, dated February 2007 at 4; *Algeria: Current Issues, Congressional Research Service (CRS) Report for Congress*, Library of Congress, dated February 16, 2005, at 1-2; Press Statement, *US. Condemns Terrorist Attacks*, United States Department of State, dated April 11, 2007.

<sup>18</sup>*CRS Report at 3.*

<sup>19</sup>*CRS Report at 3.*

<sup>20</sup>*See generally Country Reports on Human Rights Practices - 2006: Algeria*, United States Department of State, dated March 6, 2007.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

discrimination and abuse, restrictions on workers' rights, child abuse, and human trafficking were also recorded among the human rights violations in Algeria.<sup>23</sup>

Although the United States seeks to support the recent democratic efforts in Algeria, the United States Government has become increasingly concerned with the changing nature of terrorism in Algeria and its global effects.<sup>24</sup> What was once primarily domestic terrorism aimed at Algerian government infrastructure has expanded to an affiliation with Al-Qaeda and international targets.<sup>25</sup> Approximately 35 known and suspected terrorist organizations throughout the world currently target the United States for intelligence gathering.<sup>26</sup> Of these, Al-Qaeda is the terrorist organization that presents the greatest threat to United States interests, including the Homeland.<sup>27</sup> Al-Qaeda continues to plot attacks against the United States and maintains active connections with affiliates throughout the Middle East and northern Africa, now to include Algeria.<sup>28</sup> Moreover, terrorist threats to the U.S. remain the pre-eminent challenge to the intelligence community.<sup>29</sup>

A recent upsurge in terrorist attacks has only increased the United States Government concerns.<sup>30</sup> Within Algeria, terrorist groups have targeted foreigners<sup>31</sup> and remained active around the southern regions and borders of the country<sup>32</sup> where approximately 1,100 American citizens live and work in oil and gas fields.<sup>33</sup>

Although the United States has worked with the Algerian government to help combat terrorism in that country,<sup>34</sup> the Algerian government projects inconsistent policies regarding its position on international terrorism, which are often in conflict with the United States. Despite

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<sup>23</sup>*Id.*

<sup>24</sup>*Travel Warning: Algeria*, United States Department of State, Bureau of Consular Affairs, dated March 22, 2007; *Country Reports on Human Rights Practices*; see also *Press Statement*; *Country Reports on Terrorism: Chapter 2*.

<sup>25</sup>*Background Note* at 6. See also *Country Reports on Terrorism: Chapter 2 - Middle East and North Africa Overview*, dated April 30, 2007, at 1, 2-3. The Salafist Group for Preaching and Combat (GSPC) is now known as Al-Qaeda in the Islamic Maghreb (AQIM).

<sup>26</sup>*Statement for the Record: National Counterintelligence Executive, The Honorable Michelle Van Cleave before the House Judiciary Subcommittee on Immigration, Border Security & Claims*, dated September 15, 2005, at 2.

<sup>27</sup>*Annual Threat Assessment of the Director of National Intelligence for the Senate Armed Services Committee*, dated February 27, 2007, at 3.

<sup>28</sup>*Id.*

<sup>29</sup>*Id.* at 2-3. See also *The National Counterintelligence Strategy of the United States of America*, 2007 at 1.

<sup>30</sup>See n. 8.

<sup>31</sup>*Consular Information Sheet* at 1.

<sup>32</sup>*Country Report on Terrorism: Chapter 5* at 2; *CRS Report* at 3; *Background Note* at 5.

<sup>33</sup>*Background Note* at 2.

<sup>34</sup>*Background Note* at 9; *CR5 Report* at 6.

publicly condemning the September 11, 2001, terrorist attacks on the United States by Al Qaeda,<sup>35</sup> as well as condemning international terrorism,<sup>36</sup> Algerian officials distinguish between terrorism and what they consider to be legitimate armed resistance by recognized terrorist groups such as Hamas, Palestinian Islamic Jihad, and Hezbollah in the Palestinian occupied territories.<sup>37</sup> Moreover, Algeria is now considered to be a source of international terrorists, and many Algerian terrorists have been arrested in counter-terrorism operations in Europe and the United States.<sup>38</sup>

Algeria and the United States signed a treaty in 1795, and have carried on a mostly friendly relations. Since that time. In the 1980s, it was Algeria that helped negotiate the release of the U.S. Iranian hostages, and more recently, Algeria as human assistance in fighting the war on terrorism.<sup>39</sup>

## POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 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) 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."

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<sup>35</sup>*Background Note* at 8.

<sup>36</sup>*Country Reports on Terrorism: Chapter 5* at 1.

<sup>37</sup>*Id.*

<sup>38</sup>*CR5 Report* at 3.

<sup>39</sup> Applicants Exhibits B-I (Copies of Various Webpages, News Articles, and Press Statements, dated September 10-11, 2007.)



Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” Guideline ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”<sup>40</sup> The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>41</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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 under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.<sup>42</sup>

## CONCLUSIONS

### **Guideline B—Foreign Influence**

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<sup>40</sup>“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>41</sup>“The Administrative Judge considers the record evidence as a whole, both favorable and unfavorable, evaluates Applicant’s past and current circumstances in light of the provisions of the Directive, and decide[s] whether Applicant has met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

<sup>42</sup>Executive Order 10865, § 7.

Guideline ¶ 6 explains the Government’s concern about “foreign contacts and interests” stating, “if 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.”

Guideline ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case, including:

(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

(c) 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.

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 is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>43</sup> Applicant has extensive family living in Algeria. His mother, two brothers, two sisters, mother-in-law, two sisters in law, four brothers in law, plus all of their children and spouses, being citizens and residents of Algeria, creates a heightened risk of foreign pressure or attempted exploitation because of the terrorist activities in Algeria. A heightening factor is the fact that Applicant’s mother receives a government pension that is her sole means of living. She lives in an apartment that was paid for by him, which he still owns, and they have weekly contact by phone, in addition to personal visits. The most important heightened risk factor is Applicant’s older brother, who is a delegate in the national assembly. They have contact about six times a year. Some of his other relatives are teachers, but is unclear what is the source of most family incomes. The burden rests on Applicant to show that these are not concerns. Several of his in-laws have contacts with either local or national government that put his family at risk, either for their salary, professional position, or other benefit.

In addition to terrorism is the concern about the Algerian government’s human rights abuses, with thousands of people disappearing while in detention in the 1990s. On the other hand, there has been some cooperation between the United States government and Algeria on combating terrorism, however at the same time, Algeria has very interesting distinctions as to what it qualifies as terrorists because on the one hand there are some terrorist groups that they oppose, on the other hand, there

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<sup>43</sup>See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

are officials distinguishing between terrorism and what they consider to be legitimate armed resistance by recognized terrorist groups such as Hamas, the Palestinians, Islamic Jihad, Hezbollah, and others in the Palestinian occupied territories.

The Government's concern is that Applicant has dozens of family members who live and work in Algeria. There is no evidence that any of these family members have done anything wrong or illegal. Nonetheless, they are at very real risk, given today's circumstances and the world's circumstances. His connections to his mother, his siblings, and his wife's family also creates a potential conflict of interest because his relationship is sufficiently close to raise a heightened risk for a potential conflict between helping or protecting a loved one and protecting classified information.

The Government produced substantial evidence of these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Four Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

((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; 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.

Guideline ¶¶ 8(a), (b), and (c) applies to his relationships with his mother, siblings, and in-laws and extended families. His contacts with these persons are frequent, and not casual, given the ownership of property, the fact his mother lives there, he and his family use the property when traveling to Algeria, and he has traveled to Algeria four times since becoming a U.S. citizen. These very frequent contacts do not mitigate the security concerns because it is likely Applicant could be placed in a position of having to choose between his family and the interests of the United States. He did not meet his burden of showing there is "little likelihood that [his relationship with his family] could create a risk for foreign influence or exploitation."

Guideline ¶ 8(b) partially applies because Appellant has developed a sufficient relationship and loyalty to the U.S., as he can be expected to resolve any conflict of interest in favor of the U.S.

interest. He has lived in the United States for 30 years. He is a U.S. citizen. He received his college education in U.S. colleges and universities. However, he owns property in Algeria. It could potentially be used to influence, manipulate, or pressure him. Guideline ¶ 8(f) does not apply. Applicant has strong contacts and linkage to the United States, but his continued linkage to Algeria is problematic. Although this mitigating condition is partially applicable, these facts are insufficient to overcome the security concerns as discussed in the “whole person” analysis, *infra*.

### **Guideline C—Foreign Preference**

Guideline ¶ 9. The Concern. 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.

Guideline ¶ 10. Conditions that could raise a security concern and may be disqualifying include:

(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; and

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

Guideline ¶ 11. Conditions that could mitigate security concerns include:

(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.

Applicant possessed an Algerian passport that is valid until March 2009. He used the passport in the summer of 2006, July 2004, December 2001, and September 2000, in lieu of his U.S. passport. He used it prior to that, but that was before he was a U.S. citizen. He has had multiple uses after becoming a citizen. Guideline ¶¶ 10 (a) (1) and (3) apply. The benefit is the ability to travel on that passport, and so the possession itself is disqualifying. He was born in Algeria, which is mitigated by Guideline ¶ 11 (a), the dual citizenship is based solely on his parents' citizenship and his birth in Algeria. There has been no expression of willingness to renounce his citizenship, and

no evidence that the passport is required by his employer. There is no evidence that the passport has been surrendered to a cognizant security authority, such as the facility security officer, nor has it been invalidated or destroyed. His conduct is indicative of a foreign preference because he is exercising the rights of an Algerian citizen, rights a person who is solely a U.S. citizen would not be able to do. The mitigating conditions of Guideline ¶¶ 11 (b) through (e) are not applicable, and I conclude Guideline C against Applicant.

### **Whole Person Analysis**

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”<sup>44</sup> The directive lists nine adjudicative process factors (APF) which are used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.<sup>45</sup> In addition to the eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.”<sup>46</sup>

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant has lived in the United States for 30 years. His wife and children are U.S. citizens. He owns property, has investments, savings and checking accounts, votes in elections, attends in his children’s school functions, and is active in a professional association. There is no evidence he has ever taken any action which could cause potential harm to the United States. He takes his loyalty to the United States very seriously, and has worked diligently for a defense contractor for several

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<sup>44</sup>ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

<sup>45</sup>See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

<sup>46</sup>See ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

years. No witnesses recommended denial of his security clearance or produced any derogatory information about him.

The circumstances that weigh against Applicant in the whole person analysis are: (1) he has frequent and non-casual contacts with his family who currently live and reside in Algeria, and he talks to his mother frequently. These contacts are manifestations of a strong affection and regard for his family; (2) he owns property in Algeria; (3), his brother is a delegate in the national assembly of Algeria; and (4), his frequent travels to Algeria, using his Algerian passport.

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised, it is deemed best to err on the side of the government’s compelling interest in security by denying or revoking [a] clearance.”<sup>47</sup> After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence and foreign preference. This is a close case, but ultimately the evidence leaves me doubts about his security suitability.

I state again that my decision in no way questions Applicant’s allegiance, loyalty, or patriotism. I make the decision based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors<sup>48</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not overcome or successfully mitigated the government’s case. For the reasons stated, I conclude he is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant

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<sup>47</sup>*Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990).

<sup>48</sup>*See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Subparagraph 2.g:

Against Applicant

**DECISION**

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

Christopher Graham  
Administrative Judge