



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



In the matter of:)	
)	
-----)	ISCR Case No. 17-03257
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
 For Applicant: Alan V. Edmunds, Esq.
 03/27/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On October 16, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence).¹ In a notarized response dated November 7, 2017, Applicant admitted all allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned this case on June 12, 2018. On June 19, 2018, a notice was issued setting the hearing for August 22, 2018. The hearing was convened as scheduled.

The Government offered two documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-2. Applicant gave testimony and offered 14 documents, which were accepted into the record without objection as Exs. A-N. Applicant was given through September 1, 2018, to submit any additional documents. On August 23, 2018, Applicant offered what was accepted without objection as Ex. O. A transcript (Tr.) of the proceedings was received on August 31, 2018. The record was closed on September 1, 2018. After my review of the record as a whole, I find that Applicant mitigated Foreign Influence security concerns.

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Tunisia. Absent objection, I have taken such notice of the facts contained in the request. The facts are summarized in the written request and documents, and will not be repeated verbatim in this decision. Of particular note is that Tunisia has problems addressing terrorist threats within its borders, has been victimized by terrorism, and has human rights problems. This is sufficient enough of a problem that U.S. citizens are warned to avoid travel to southeastern Tunisia, along the Libyan border.

Findings of Fact

Applicant is a 46-year-old service desk analyst who has worked for the same employer, a defense contractor, for about a year. His salary is approximately \$60,000 a year. Applicant earned a bachelor's degree in his native Tunisia and, since moving to the United States, has earned a master's degree in information systems. He has been married for over 15 years. The couple has a pre-teen child attending a local school. Remaining in Tunisia are several relatives of Applicant: his mother, two brothers, and three sisters, all of whom are citizens and residents of Tunisia.

Applicant immigrated to this country in 1999 from his family's home in a region distant from the Libyan border of Tunisia. A few years later, he met his wife, moved to her state, married, and started a family. Both spouses are established professionals, with Applicant's hairstylist wife earning between \$35,000 and \$45,000 per year. They are current on their bills and taxes, and saving for their future.

Applicant owns no property in Tunisia and has no expectation of any inheritance based in Tunisia. Applicant became a naturalized U.S. citizen in 2013. In 2016, he believes he formally renounced his Tunisian citizenship by surrendering his Tunisian passport to his company. He has not been back to Tunisia in at least three years, when he went to attend his late father's funeral. (Tr. 30) He ceased sending any money to relatives in Tunisia in 2017, when he discovered it could raise trustworthiness concerns.² (Tr. 28) He has no bank account abroad. Applicant no longer has a Tunisian passport, having submitted it to his security officer in 2018 for destruction; when traveling, he now only uses his U.S. passport. (Tr. 29; Ex. O). .

In Tunisia, Applicant's mother, a homemaker and cancer survivor with recurring medical issues, lives with Applicant's two older, unmarried, non-working sisters. His mother is about 79 years old. Applicant talks to his mother by telephone "not too often." (Tr. 31) He makes irregular calls to her to check on her health. She does not visit the United States. Since learning that communication with members of family living in foreign countries or family who are citizens of a foreign country may raise security concerns, Applicant has ceased contact and connection with the rest of his family in Tunisia. (Tr. 31, 46-47)

² Earlier, it was not unusual for Applicant to send his mother about \$200 about twice a year. (Tr. 53)

Applicant has one brother who is a private business owner and another brother who is a high school teacher, although it is unknown whether he is with a private or public institution. Neither brother has connections with the Tunisian government or military. Applicant has had no contact with his brothers or his sisters since their father's early 2016 funeral.³ He is not aware what, if anything, his third and youngest sister does, although he is aware she lives apart from his other siblings and is married. None of this family knows what Applicant does for a living; they only care that he is "doing fine." (Tr. 33)

Applicant has no plans to ever return to his family seat in Tunisia or to that country in general. He noted, "my country is the United States of America. That is my dream since I came here in 1999. . . . All my future is in [sic] here." (Tr. 35) Applicant is highly respected by colleagues and friends. Currently in a public trust position, Applicant has never been in a situation where he or a family member has been exploited.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person in making a decision. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.

Under the Directive, the 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 and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends beyond normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information.

³ Applicant had little or no contact with his brothers during his 2016 trip to Tunisia for their father's funeral. However, one brother visited the United States in early 2014. (Tr. 55)

Analysis

Under the AG, foreign contact and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U. S. interests or otherwise be made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contact and interests should consider the country (Philippines) in which the foreign contact or interest is included.

The AG lists nine possible disqualifying conditions. Given that Applicant has a mother and siblings who are citizens and residents of Tunisia, I find the following apply:

¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country, if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Under ¶ 8, two mitigating conditions are potentially applicable:

¶ 8(a): the nature of the relationships with foreign persons, the country 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 United States, and

¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

As a threshold issue, I noted the information regarding Tunisia incorporated into this analysis above. I considered the totality of Applicant's ties to Tunisia, the nature of its government, its relationship with the United States, and its human rights record, all of which 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Here, Tunisia is a country of heightened risk, in part because of internal incidents of terrorism its government is grappling to contain. This process is thus concerned with whether there is a risk of exploitation, inducement, manipulation, pressure, or coercion related to Applicant's family in that country. It is specifically noted, however, that there is no evidence indicating that its government targets U.S. citizens for economic or classified informational purposes. It is similarly noted that Applicant's family is far removed from the area to which the U.S. Department of State advises U.S. citizens refrain from travel.

Applicant's closeness to his aging and ill mother is demonstrated by his on-going, albeit substantially reduced and infrequent, contact by telephone. She, in turn, is a life-long widow and homemaker, quietly cared for by her two unmarried, non-working daughters. None of them have a known nexus to either a foreign government or military power. Applicant intentionally cut off all contact with these siblings once he discovered such contact could raise security issues. This also includes his youngest sister and his two brothers, none of whom are known to have a connection with a foreign government or military. They all live quiet, unexceptional lives. None of these relations know what Applicant does for a living, nor has the topic piqued their interest. By all accounts, they live "under the radar" in Tunisia, absorbed in their own day-to-day lives.

In contrast, Applicant came to the United States 20 years ago to pursue his American dream. He is a loyal U.S. citizen. Here, he met his wife, completed graduate school, married, settled in his community, and started his family. The is raising their child here. With a joint income of about \$100,000 a year, Applicant and his wife live well within their means. He freely chose to disassociate himself from his foreign kin in favor of his immediate family here. Applicant expressed his undivided loyalty for the United States, which he considers his home. I find that Applicant's familial ties to Tunisia are outweighed by his deep and long-standing relationships and loyalties in the United States. I find that there is no conflict of interest because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

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 the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. I also considered Applicant's highly credible testimony and service in a public trust position.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude foreign influence security concerns are mitigated.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge