

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: This 58-year-old programmer was born in Tunisia and came to the U.S. in 1980 to attend college. He became a U.S. citizen in 1986 and has lived here ever since. He retains his Tunisian citizenship and recently renewed his Tunisian passport, to facilitate his travel to that country to visit his family. He intends to retain both his Tunisian passport and citizenship. He has numerous close family ties to that country and several relatives have had problems with the Tunisian government because of Applicant's status as a joint citizen of the U.S. Applicant himself is sometimes questioned by airport authorities when he visits that country. As to both Guidelines, he has not mitigated the risks established by the Government's evidence. Clearance is denied.

CASENO: 06-09277.h1

DATE: 04/09/2007

DATE: April 9, 2007

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In Re:)	
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-----)	ISCR Case No. 06-09277
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT
Candace Le'i , Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

This 58-year-old programmer was born in Tunisia and came to the U.S. in 1980 to attend college. He became a U.S. citizen in 1986 and has lived here ever since. He retains his Tunisian citizenship and recently renewed his Tunisian passport, to facilitate his travel to that country to visit his family. He intends to retain both his Tunisian passport and citizenship. He has numerous close family ties to that country and several relatives have had problems with the Tunisian government because of Applicant's status as a joint citizen of the U.S. Applicant himself is sometimes questioned by airport authorities when he visits that country. As to both Guidelines, he has not mitigated the risks established by the Government's evidence. Clearance is denied.

STATEMENT OF THE CASE

On September 4, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On November 3, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on November 22, 2006. A Notice of Hearing was issued on January 8, 2007, setting the hearing for February 15, 2007. The Government introduced three (3) exhibits (Government's Exhibits (GX) 1 - 3 and four (4) Official Notice documents (ON 1-4). On February 20, 2007, the Government offered three additional documents that were previously inadvertently omitted from the case file. Applicant testified, and introduced four documents (Applicant's Exhibits (AX) A - D). The transcript was received on February 27, 2007.

FINDINGS OF FACT

Applicant is a 58-year-old programmer, born in Tunisia in 1968. He became a U.S. citizen in 1986 (GX 1, at Item 4). He recognizes himself as a dual citizen with Tunisia (*Id.*, at Item 1). He has been employed by defense contractors since at least 1986 (*Id.*, at Item 6). He was willing to renounce his Tunisian citizenship (GX 3), but has since changed his mind.

The September 25, 2006 SOR contains two (2) allegations under Guideline C (Foreign Preference) and 14 allegations under Guideline B (Foreign Influence). Applicant denied allegations 1.a and 1.b. He admitted allegations 2.a., 2.b., 2.c., 2.d., 2.e., 2.f., 2.g., 2.h., 2.i., 2.j., 2.m., and 2.n. He denied allegation 2.k. The specific admissions are hereby accepted and incorporated into this decision as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline C (Foreign Preference)

1.a. - Applicant was born in Tunisia. He came to the U.S. in about 1980 to attend college from 1980-1983. He became a naturalized U.S. citizen in 1986 and possesses a U.S. passport. He is married to a woman born in Tunisia who now has dual U.S.-Tunisian citizenship. He has three children, all of who are native-born U.S. citizens, but who also have dual Tunisian citizenship (GX 1). Applicant retains dual citizenship with Tunisia and he renewed his Tunisian passport on September 4, 2006. That passport is valid until September 3, 2011 (Tr at 25 and GX 2).

1.b. Since 1986, Applicant has used his U.S. passport for all purposes except for entering and leaving Tunisia. He does so because that country requires the use of a Tunisian passport by anyone born in Tunisia, regardless of any other citizenship (Tr at 24). The only exception was in June 2006, when the Tunisian embassy in Washington, D.C. authorized him to enter and leave that country using his U.S. passport.

Guideline B (Foreign Influence)

2.a. - Applicant's wife is a dual citizen of the U.S. (naturalized in 1999) and Tunisia. She resides with Applicant in the U.S. She was born in 1963 and married Applicant in Tunisia in 1986, the same year Applicant became a U.S. citizen and began working here.

2.b. - Applicant's three children are dual citizens of the U.S. and Tunisia. They reside with him in the U.S.

2.c. - Applicant's mother is a citizen of Tunisia and resides in that country.

2.d. - Applicant provides about \$200.00 per month to his mother in Tunisia.

2.e. - Applicant's brother is a citizen of Tunisia and resides in that country.

2.f. - Applicant's brother is a retired officer in the Tunisian military.

2.g. - Applicant's three sisters are citizens of Tunisia and reside in that country.

2.h. - Applicant's brother-in-law is a citizen of Tunisia and resides in that country. He is a police officer.

2.i. - Applicant's mother-in-law is a citizen of Tunisia and resides in that country.

2.j. - Applicant's wife has two brothers and two sisters who are citizens of Tunisia and reside in that country.

2.k. - Applicant's nephew is a citizen of Tunisia, but presently resides and attends college in the U.S. Applicant provides financial support to his nephew.

2.l. - Applicant's relative, cited in 1.e. and 1.f., above, was harassed while in the Tunisian military, for reasons Applicant believes were connected with Applicant's acquiring U.S. citizenship (GX 2 and Tr at 41, 42).

2.m. - Applicant has reasons to believe that the safety of his mother and brother will be jeopardized by the Tunisian government if his statements about his brother's treatment in the Tunisian military become known (*Id*). His brother had a "good career, [but] all of a sudden things have started to change for him" (Tr at 42).

2.n. - Applicant traveled to Tunisia in August 2003, June and December 2004, June 2005, and June 2006. There has been some harassment at the airport in Tunisia (Tr at 49).

Applicant has worked for the same major Defense contractor for about 20 years. His supervisor thinks very highly of Applicant and explains that Applicant needs a security clearance to continue working as he is currently needed. The supervisor has known Applicant for three years and believes him to be a "very good citizen of this nation and [who] adheres to the principles and values under which this nation was founded. I am confident that [Applicant] will always work toward protecting the interests and integrity of [the U.S.]" (AX A).

The Security Coordinator for Applicant's unit at the defense contractor has worked with Applicant for about 20 years and states the following:

I feel that [Applicant] has been a very conscientious and trustworthy employee and coworker and has handled Security matters with proper procedures and seriousness. I feel that [Applicant] is a person I consider as an asset [to the company] and to this country of ours (AX B, dated February 13, 2007).

A third coworker "believes [Applicant] to be a good man with high moral standards. He does a good job and would be a valuable asset to the company if he is granted a security clearance. I know him well and in my opinion, he would never be a security risk to the U.S." (AX C).

A fourth coworker has known Applicant for about 18 months and views Applicant as a "good worker with strong moral standards . . . He cares deeply about his family and their education. All in all, he is dedicated to the well being of this nation" (AX D).

Official documents submitted by the Government (Official Notice (ON) Documents 2, 3, and 4) state that Applicant's home country is a developing democracy that as yet provides little political freedom for its citizens. Terrorist activity has targeted western tourists. Security forces often question citizens seen talking to foreign visitors or residents. In addition, dual Tunisian-U.S. citizens are expected to use a Tunisian passport to enter and leave that country and, if a Tunisian-American succeeds in entering Tunisia using a U.S. passport, he or she will still have to present a Tunisian passport to exit the country.

POLICIES

Viewed in an overall context, under E2.2.3.of the Directive, the ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an *overall common sense determination* based upon careful consideration of the following, each of which is to be evaluated in the *context of the whole person*.

Explained further below (emphasis added):

The Whole Person Concept: Under E2.2.1., the DoD adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (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 pertinent 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;

An Administrative Judge must also consider the Disqualifying and Mitigating Conditions for the specific Guideline(s) cited in the SOR. In the present case, only Guideline B (Foreign Influence) is alleged.

CONCLUSIONS

Guideline C - Foreign Preference

Applicant previously stated a willingness to renounce his Tunisian citizenship (Tr at 32), but he recently renewed his Tunisian passport in order to visit his family in that country and intends to do so in the future. That intent indicates that he is currently not willing to surrender his Tunisian passport (TR 32, 33 and GX 3). He understands that the Directive makes the possession of a foreign passport a disqualifying condition (Tr at 33). Nevertheless, he renewed his Tunisian passport in September 2006, some 20 years after becoming a U.S. citizen and about 18 months after completing his SF 86 in 2005. The evidence establishes that Tunisia requires anyone that country considers to be a Tunisian citizen to present a Tunisian passport to enter and leave that country. He has presented both his U.S. and Tunisian passports when he enters Tunisia, but only his Tunisian passport is stamped (Tr at 33, 34). The only exception was in 2006, when he did not have a valid Tunisian passport. He was allowed to enter, but had to obtain a special exit permit in order to leave the country. He intends to visit Tunisia in the future and intends to retain his valid Tunisian passport in order to facilitate his travel there (Tr at 36, 37). All such travel has been to visit his family (Tr at 36). During his 2006 visit to Tunisia, he was questioned or interrogated for about "2 ½ hours" by representatives of the Tunisian Ministry of Interior (Tr at 38, 39), including questions about whether he might be a threat to that country.

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.

Disqualifying Conditions: 10.(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: (a) possession of a current foreign citizenship; and (b) action to acquire or obtain recognition of foreign citizenship by a U.S. citizen, such as renewing a passport.

Mitigating Conditions: 11. None that are established by the record; e.g., (a) Applicant's dual citizenship began with his parents' citizenship or his birth in a foreign country, but he has confirmed that dual citizenship by obtaining a foreign passport; (b) while Applicant earlier expressed a willingness to renounce his dual citizenship, his stated intention to retain his Tunisian passport makes his earlier statement of willingness no longer credible.

Guidelines in the Directive are based on DoD's long experience with cases involving similar facts and circumstances, and I am required to applying my findings of fact to those guidelines. There is no question that Applicant is and intends to remain a dual U.S./Tunisian citizen and that he possesses and recently renewed his Tunisian passport. I have considered his rationale for retaining his Tunisian citizenship and passport, essentially to allow him to visit his parents. While his choice is understandable, it also means he falls within both disqualifying conditions cited above. He has failed to establish the applicability of any parallel mitigating condition, in that he has not currently and explicitly expressed a willingness to renounce his Tunisian citizenship, nor has he surrendered his Tunisian passport.

Guideline B (Foreign Influence)

The existence and status of the family members cited in the SOR, and admitted to by Applicant, not only clearly establishes the existence of close ties, but establishes a significantly higher risk than appears in most cases involving Guideline B issues. He has a mother, to whom he provides financial support; and other siblings and in-laws who are citizens and residents of Tunisia, and a relative who is a citizen of Tunisia and resides in the U.S. The status of two relatives; with connections to the Tunisian government, necessarily raises the risk level even higher than it would be with relatives with no contacts with the agencies of the Tunisian government.

I have carefully evaluated the above information in the context of the status of the other country being Tunisia, specifically in view of the U.S. Government's official positions as to Tunisia and its evaluation of conditions in Tunisia. While Tunisia is generally considered friendly to the U.S., the U.S. Government has officially recognized the reality of the Tunisian government's treatment of some of its citizens and of the presence of terrorists in that country. As a Tunisian citizen, Applicant is fully subject to Tunisian law while in that country, which places him beyond the ability of the U.S. Government to offer the level of protection that it would otherwise be able to apply on behalf of U.S. citizens.

Dual citizenship is generally not considered a basis for revoking U.S. citizenship, which once obtained becomes a right that cannot be revoked except in specific circumstances not applicable here. However, eligibility for a security clearance is not a right, but a privilege, and a person seeking access to the nation's secrets has the burden of establishing his or her eligibility. It is a basic tenet of the security clearance process that any doubts, such as those created by a failure to mitigate specific disqualifying conditions, must be construed against the granting of a clearance.

That is the position Applicant has created by his choices, as described above. His quandary

is shown in his answer to Department Counsel's questions as to what he would do if he was asked to act improperly in regards to classified information (Tr at 58-60). He said: "I don't know what to do. I probably won't go there [Tunisia], at least if I know it's going to be serious. I'll probably have to alert the system here, the Government, the State Department, or at least work, and have them investigate why they are doing these things.

There is no evidence suggesting that Applicant might intentionally act against U.S. security interests. However, this is a case where Applicant's feelings and ties to his family and relatives in Tunisia might place him into a difficult position. Already, he says, family members have been harassed in Tunisia because of Applicant's U.S. citizenship, and such conduct is likely to increase if it is learned that Applicant has access to U.S. secrets.

As I understand Applicant's state of mind, Applicant intends to continue to visit his family in Tunisia and need his Tunisian passport to leave that country even if he is allowed to use his U.S. passport to enter (Tr at 63). Retention of the Tunisian passport necessarily means retention of his Tunisian citizenship, so that he currently is not willing to renounce that citizenship nor to surrender the foreign passport. Retention of the Tunisian passport allows Applicant to travel anywhere without such travel appearing on his U.S. passport, therefore denying U.S. authorities the ability to detect travel to countries that may be considered hostile to U.S. interests.

In summary, I conclude that Applicant's choices as to his possession and use of Tunisian citizenship and passports, regardless of the reasons, indicate a less than unequivocal preference for the U.S. and its security interests. At the same time, his close ties to family members in Tunisia raise the level of risk that he might feel forced to choose between competing loyalties.

I have carefully considered the high praise and recommendation that appear in the four letters of recommendation provided by Applicant's coworker and the apparent absence of any security-related or other problems at work. While entitled to significant weight, the letters do not specifically address the fact of Applicant's choices to retain his Tunisian citizenship and passport and do not mitigate the risks discussed above.

Foreign Influence - The Concern: 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 nation, 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, included, but not limited to, such considerations as whether the country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Disqualifying Conditions: (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen or resident in a foreign country if that risk creates a heightened risk of foreign exploitation, inducement, pressure, or coercion; and (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.

Mitigating Conditions: None that are established by the record. Overall, but particularly

considering the evidence in support of allegations 2.f., 2.h., 2.l., and 2.m, the record does not permit a conclusion that MC (a), MC (b) and/or MC © applies. The number and closeness of the family members, two of whom have ties to the Tunisian government, and the questioning of Applicant by authorities at the airport in Tunisia all add to the level of risk.

There is no suggestion in the record that Applicant would voluntarily act against U.S. security interests. Rather, the concern is really that Tunisian authorities or other foreign agencies might put pressure on his family members to persuade Applicant to act against U.S. security interests. There is some evidence (from Applicant), that at least two relatives have or had some connection with the Tunisian government and that his status as a U.S. citizen is known in Tunisia.

There is no evidence one way or the other as to whether the relatives are susceptible to pressure from the Tunisian government or intelligence agencies and might ask Applicant to act against U.S. security interests (ISCR Case No. 99-0511 (December 12, 2000) at pp 8, 9; and ISCR Case No. 00-0485 (February 1, 2002) at p.4. The bottom line is that Applicant wants to continue visiting his family in Tunisia and intends to retain his Tunisian citizenship and passport in order to do so (Tr at 43-45). While such intentions and conduct will not affect his retention of his U.S. citizenship, his choices do raise a doubt about his eligibility to hold a DoD security clearance.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., “any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation’s security.” If the Government meets its burden (either by the Applicant’s admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant. I conclude that the government has established a *prima facie* case under Guidelines B and C. The burden of persuasion therefore shifts to Applicant, who is obligated to present evidence sufficient to rebut, extenuate, or mitigate the security concerns raised. For the reasons stated above, I conclude that Applicant had not met his burden of persuasion.

In summary, despite his long and praiseworthy conduct while in the U.S., there are simply too many unmitigated factors that raise questions under Guidelines B and C. Consequently, the record compels the conclusion that he is not currently eligible for access to the nation’s secrets.

FORMAL FINDINGS

_____ Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

<i>Guideline C (Foreign Preference)</i>	Against the Applicant
Subparagraph 1.a.	Against the Applicant
Subparagraph 1.b.	Against the Applicant

Guideline B (Foreign Influence)

Against the Applicant

Subparagraph 2.a.	Against the Applicant
Subparagraph 2.b.	Against the Applicant
Subparagraph 2.c.	Against the Applicant
Subparagraph 2.d.	Against the Applicant
Subparagraph 2.e.	Against the Applicant
Subparagraph 2.f.	Against the Applicant
Subparagraph 2.g.	Against the Applicant
Subparagraph 2.h.	Against the Applicant
Subparagraph 2.i.	Against the Applicant
Subparagraph 2.j.	Against the Applicant
Subparagraph 2.k.	Against the Applicant
Subparagraph 2.l.	Against the Applicant
Subparagraph 2.m.	Against the Applicant
Subparagraph 2.n.	Against the Applicant

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.

**BARRY M. SAX
ADMINISTRATIVE JUDGE**