

DATE: October 31, 2007

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In Re: )  
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 ) ADP Case No. 06-14978  
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 Applicant for Trustworthiness Determination )  
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**REMAND DECISION OF ADMINISTRATIVE JUDGE  
JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmonds, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's mother and nine siblings are citizens of Morocco. One sibling is a high-ranking Moroccan government official. Applicant has strong ties of affection to these immediate family members. He maintains regular, close contact with them. Determination of Trustworthiness is denied.

**STATEMENT OF THE CASE**

On April 9, 1993, the Composite Health Care System Program Office (CHCSPO), the

Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), entered into a Memorandum of Agreement which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, *Personnel Security Program*, dated January 1987.

On August 31, 2006, DOHA issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability, and eligibility for applicant to hold a sensitive Information Systems Position (ADP-I/II/III).

Applicant responded to the SOR in writing on September 25, 2006, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about February 16, 2007. Applicant filed a response to the FORM on or about March 29, 2007. The case was assigned to me on April 16, 2007, and a decision was issued on May 9, 2007. On October 1, 2007, the DOHA Appeal Board remanded the case to me for issuance of a new decision.

### **RULINGS ON PROCEDURE**

Department Counsel's Motion to amend SOR Paragraph 1.b., set forth on page 4 of the FORM, is granted.

### **FINDINGS OF FACT**

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Applicant is 56 years of age. He was born in Morocco. He became a United States citizen in 1992. His spouse, to whom he has been married since 1984, was born in the United States. Their two children were born in the United States.

Applicant's mother and nine siblings are citizens of Morocco. His mother and seven siblings reside in Morocco; one sibling resides in a third country and another resides in the United States. One of applicant's siblings is a very high-ranking Moroccan government official,<sup>1</sup> and as such, is an agent of Morocco.

Applicant traveled to Morocco in at least 1997, 1999, 2000 and 2002 to visit his family. He communicates with his mother every three to four weeks by telephone, and with his siblings once a month by telephone.

In a written statement he gave to the OPM in October 2004, applicant stated he owned a "plot of farm land" in Morocco. In his response to the SOR, he stated he no longer owns any property in Morocco.

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<sup>1</sup>Identifying the position the brother occupies could lead to applicant's identification.

I take administrative notice of the following:

1. Morocco, located in North Africa, is a constitutional monarchy, wherein ultimate power resides with the King, who may, at his discretion, terminate the tenure of any minister, dissolve the Parliament, call for new elections, or rule by decree. The King is the head of the military and the religious leader of the majority Sunni Moslem population. Morocco is recognized as a moderate Arab state. United States-Moroccan relations, characterized by mutual respect and friendship, have remained strong through cooperation and sustained high-level dialogue. (Background Note Morocco, U.S. Department of State, July 2006; Government Document for Administrative Notice I.)

2. Morocco considers all persons born to Moroccan fathers to be Moroccan citizens. In addition to being subject to all Moroccan laws, United States citizens who possess the nationality of Morocco may be subject to other laws that impose special obligations on citizens of that country. (Government Document for Administrative Notice II.)

3. In May 2003, Moroccan suicide bombers affiliated with the Salafiya Jihadiya movement attacked sites in Casablanca, killing 45 people. Subsequently, Moroccan authorities arrested seven individuals from a Salafiya Jihadiya cell suspected of planning further attacks in that country. Authorities linked these seven individuals to six Moroccans whom Algerian authorities had returned to Morocco after their arrest while training with militants from the Algerian terrorist group GSPC. Later that year, Moroccan authorities dismantled a 17 member incipient terrorist network that was linked to small terrorist groups in Iraq. Moroccan-born extremists were implicated in the March 2004 train blasts in Madrid. The potential for violence against American interests and citizens remains high in Morocco. (Consular Information Sheet, Morocco, U.S. Department of State, January 2007; Government Document for Administrative Notice II.) (Country Reports on Terrorism 2005, U.S. Department of State, April 2006; Government Document for Administrative Notice III.)

## CONCLUSIONS

The evidence establishes that applicant's mother and nine siblings are citizens of Morocco, and that his mother and seven of his siblings reside in Morocco. The evidence further establishes that one of applicant's siblings is a very high-ranking government official, and thus an agent of Morocco.

A Guideline B concern exists when an individual seeking a favorable trustworthiness determination is bound by ties of affection, influence, or obligation to immediate family in a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents or residents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States. Having an immediate family member occupy a high-ranking position in another country only heightens the risk.

The application of disqualifying conditions under Guideline B is not limited to countries hostile to the United States. ISCR Case No. 02-18668 at 4 (App. Bd. Feb. 10, 2004.) The United States has a compelling interest in protecting and safeguarding sensitive information from persons, organizations, or countries not authorized to have access to it, even if their interests are not opposed to those of the United States. Moreover, history has demonstrated that individuals have wrongfully

passed sensitive information to countries not hostile to the United States, and terrorist acts against the United States and its allies have been carried out by individuals residing in or citizens of countries not hostile to the United States. Applicant's case requires the recognition that international terrorist groups are operating in Morocco and the surrounding region. American citizens with immediate family members who are citizens and residents of Morocco could be vulnerable to coercion, exploitation, or pressure.

The facts of this case require application of Disqualifying Conditions E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*), E2.A2.1.2.3 (*relatives . . . who are connected with any foreign government*), and E2.A2.1.2.6 (*conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government*).

An applicant may mitigate foreign influence security concerns by demonstrating that foreign family members are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign family members and loyalty to the United States. (Mitigating Condition E2.A2.1.3.1.) Since applicant's brother is a high-ranking agent of the Moroccan government, this mitigating condition is not applicable.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. (Mitigating Condition E2.A2.1.3.3.) In view of applicant's regular and frequent contact with his mother and siblings, this mitigating condition is not applicable.

In reaching my decision in this case, I have also considered the factors set forth in Section E2.2 of the Directive. On balance, they do not help applicant. Applicant has lived in the United States for many years, married a native-born American, and has worked and raised his two children here. These are factors in his favor. However, he is still a Moroccan citizen,<sup>2</sup> which leaves him connected to, and in some respects obligated to, Morocco.<sup>3</sup> He voluntarily maintains close and regular contact with his immediate family members in Morocco, one of whom is a very high-ranking Moroccan official. This close contact includes trips to Morocco every two to three years. These trips

significantly increase his vulnerability to foreign influence, particularly since he is a citizen of Morocco.<sup>4</sup> In view of the foregoing, Guideline B is found against applicant.

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<sup>2</sup> In his 2004 written statement to the OPM, applicant claimed he remains a Moroccan citizen because Moroccan government policy prohibits the renunciation of Moroccan citizenship in situations like his.

<sup>3</sup>In his 2004 written statement to the OPM, he stated, "I do understand my rights, privileges and obligations to both the United States and Morocco."

<sup>4</sup> As noted in the Findings of Fact, Morocco considers all persons born to Moroccan fathers to be Moroccan citizens. Accordingly, the Moroccan government still considers applicant to be a Moroccan citizen. This means that while in Morocco, applicant may be subject to other

There is nothing in the evidence that suggests applicant is not a loyal American citizen and a credit to his adopted country. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to applicant's allegiance, loyalty, or patriotism. He simply was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of sensitive information.

## **FORMAL FINDINGS**

### GUIDELINE B: 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 make or continue a determination of trustworthiness, suitability and eligibility for applicant to hold a sensitive Information Systems Position.

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Joseph Testan  
Administrative Judge