

KEYWORD: Foreign Influence

DIGEST: Applicant is 46 years old and works as a system administrator for a defense contractor. He was born in Libya, and his immediate family remains in that country as citizens and residents. Because he presented no facts about his family, he failed to mitigate security concerns arising from foreign influence.

CASENO: 06-18072.h1

DATE: 03/29/2007

DATE: March 29, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-18072
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and works as a system administrator for a defense contractor. He was born in Libya, and his immediate family remains in that country as citizens and residents.

Because he presented no facts about his family, he failed to mitigate security concerns arising from foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On October 11, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline B (Foreign Influence), of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

In a sworn statement, dated October 23, 2006, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on January 23, 2007, and provided a complete copy of the file of relevant material (FORM)² to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on February 1, 2007. Applicant did not submit any additional information. The case was assigned to me on March 14, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a through 1.f). Those admissions are incorporated as findings of fact. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Since 1991, Applicant who is 46-years-old, has worked as a system administrator for a defense contractor. He was born in Libya in 1960, and was raised and educated in that country. However, he came to the United States to study for his undergraduate degree. He received a degree in computer sciences in 1997. He submitted a security clearance application on May 25, 2005.³

While in Libya, Applicant married a Tunisian woman. He was divorced in 1995 in the United States. He remarried an American woman, but they are now divorced. He and his wife have four children who are United States citizens by birth. He became a naturalized citizen on October 6, 1988, and was issued a U.S. passport in 2002.⁴

Over the years, Applicant has traveled extensively. Between 1995 and 2005, he took several international trips for business (United Kingdom), and returned to Tunisia for pleasure many times to visit his family. His mother is deceased. However, his father and step-mother are citizens and

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²The government submitted seven items in support of its contention.

³Item 1 (Applicant's Security Clearance Application (SF 86), dated May 25, 2005) at 1-34.

⁴*Id.*

residents of Libya. He has seven brothers who are citizens and residents of Libya. His father-in-law and mother-in-law live in Tunisia. Applicant maintains weekly contact with his in-laws. Other than addresses and dates of birth of his family members, as noted on his security clearance application (SF 86), Applicant has provided no information regarding his family. Other than admitting to their existence, Applicant failed to provide any pertinent facts in response to the SOR.⁵

The government submitted information regarding Libya and Tunisia. It notes that the U.S. withdrew from diplomatic relations with Libya in 1973 to protest its support for revolutionary and terror groups. Although the Libyan Government's designation as a state sponsor of terrorism was rescinded on June 30, 2006, recent worldwide terrorist alerts have stated that extremists groups continue to plan terrorists attacks against U.S. interests in that region.⁶

The country maintains an extensive security apparatus that includes police and military units, multiple intelligence services, local Revolutionary committees and "Purification" committees. Security forces have the authority to impose sentences without trial, and the various Security forces committed numerous, serious human rights abuses.⁷

Tunisia has sought to maintain good relations with the West, while playing an active role in Arab and African regional bodies.⁸ Tunisian-U.S. relations suffered briefly in 1985 after the Israeli raid on the Tunis PLO headquarters, in 1988 after the Tunisian assassination of a PLO terrorist, and again in 1990 during the Gulf War. Tunisia has an active schedule of joint military exercises with the U.S. The Department of State, however, warns that in late 2002 and early 2003 tourists were kidnapped in the Sahara desert areas of southeastern Algeria, and although American citizens have not been attacked, Al-Queda terrorists attacked a synagogue and many Western tourists were killed.⁹

In assessing the vulnerability to exploitation of Applicant's family, it is helpful to consider several factors. Even friendly nations can have profound disagreement with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical field. See ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). The nature of a nation's government, its relationship with the U.S., and its human rights records are all relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline,

⁵Item 7 (Interrogatories, dated September 28, 2006).

⁶Consular Information Sheet - Libya, United States Department of State, dated July 27, 2006 at 2.

⁷Country reports on Human Rights Practices 2005 - Libya, United States Department of State, dated March 8, 2006.

⁸Background Note: Tunisia, United States Department of State, dated October 2006 at 6.

⁹*Id.* at 3-6.

the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive are intended to assist the administrative judge in reaching fair and impartial commonsense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 voluntariness of participation; (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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline B - Foreign Influence: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should 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.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."¹⁰ For the purposes herein, despite the different wording in each, I have concluded all of the standards are the same. 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 that are grounded on mere speculation or conjecture.

¹⁰The Directive, as amended by Change 4, dated April 20, 1999, uses 'clearly consistent with the national interest' (Sec. 2.3; Sec.2.5.3; Sec 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.2.5.; Sec. E3.1.2.6.; and Sec. E3.1.2.7.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).

In the decision-making process, the burden of producing evidence initially falls on the government 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.¹¹ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.¹²

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that 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. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.¹³

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance decisions shall be, "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to each allegation set forth in the SOR.

Foreign Influence

The government established its case under Guideline B. Applicant admits that his father, step-mother, seven brothers, and in-laws are residents and citizens of Libya and Tunisia. The foreign citizenship and residency of these individuals raise a security concern, under Foreign Influence Disqualifying Condition (FI DC) AG ¶ 7 (a) (*contact with a foreign family member, business or*

¹¹ISCR Case No. 96-0277 (July 11, 1997) at 2.

¹²ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.

¹³Directive, Enclosure 2, Para. E2.2.2

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).

Applicant admits traveling on many short trips for business and for family pleasure. He did not elaborate on the extent or nature of the visits. This raises FI DC AG ¶ 7 (i) (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government or country*).

When the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome or outweigh the Government's case. Here Applicant offered no such information. Furthermore, the FORM does not include any facts that might provide an argument for Applicant; it only contains references to these individuals in the Applicant's SF-86, the SOR, and the reply to the SOR. Without more, a determination cannot be made under Foreign Influence Mitigating Condition (FI MC) AG ¶ 8 (a) (*the nature of the relationships with foreign persons, the country in which the 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.*) . Consequently, that mitigating condition cannot be applied.

Applicant is a naturalized U.S. citizen and his children are U.S. citizens. However, he is in a position of vulnerability - he could be placed in the vulnerable position of having to choose between his loyalty to the U.S. and his loyalty to members of his family in Libya. Applicant insists he will report any foreign contacts and that he is not vulnerable to foreign coercion or influence, but there is insufficient evidence to support the application of FI MC AG ¶ 8 (b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group or 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*).

Applicant admitted that he has taken many short trips for business out of the country to the United Kingdom. He visited his family from 1995 until the recent present many times. He also acknowledged his weekly contacts with family members, demonstrating familial ties. Thus, FI MC AG ¶ 8 (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*) does not apply.

There is nothing in the record to support the other mitigating conditions such as authorized contact by the U.S. government, reporting any contacts with persons or organizations from a foreign country, or financial or property interests that are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive

duties. As noted above, the adjudicative process is a careful weighing of a number of variables in considering the whole person concept. It recognizes a person be viewed by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered both the record evidence and Applicant in light of the whole-person concept. I have also considered the countries at issue, Libya and Tunisia. Applicant is a mature and well-educated professional who has worked for a defense contractor for many years. A naturalized U.S. citizen, his immediately family remains citizens and residents of Libya and Tunisia. Such facts are not necessarily dispositive. Applicant failed, however to provide any facts upon which an assessment can be made as to whether they might be used as instruments or victims of state coercion. Because any doubts must be resolved in favor of national security, I find the allegations regarding foreign influence in the government's favor. Clearance is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against 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. Clearance is denied.

Noreen A. Lynch

Administrative Judge