

KEYWORD: Foreign Influence; Outside Activities

DIGEST: Applicant's numerous immediate family members who are citizens and residents of Morocco, and his extensive Moroccan property interests generate a security risk which he failed to mitigate. Clearance is denied.

CASENO: 06-19464.h1

DATE: 09/27/2007

DATE: September 27, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-19464
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant's numerous immediate family members who are citizens and residents of Morocco, and his extensive Moroccan property interests generate a security risk which he failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On May 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on June 14, 2007, admitting the allegations and electing to have the case decided on the written record.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on July 24, 2007. He received it on July 31, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He neither objected to any of the FORM submissions, nor filed any additional evidence to be considered. The case was assigned to me on September 7, 2007 requesting an administrative determination.

RULINGS OF EVIDENCE

At the Government's request, I took administrative notice of the following facts:

1. Morocco is a moderate, stable, democratizing nation with whom the United States enjoys strong ties and good relations.¹
2. Several terrorist attacks have occurred in Morocco over the past five years. Some targeted U.S. interests. The potential for terrorist violence against American interests and citizens remains high.²
3. Morocco has a poor human rights record. Problems include arbitrary arrest and detention. It sometimes places foreign citizens under surveillance.³

The FORM contains seven exhibits, in addition to four source documents for the facts I administratively noted. It also contained an unmarked document entitled "Personal Subject Interview." It appears to be part of a report of investigation, covering the period May 22, 2006 through June 5, 2006, is unsigned, and is not referenced elsewhere in the FORM. I did not consider it.

FINDINGS OF FACT

¹Exhibit I, U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Morocco*, dated February 2007, at 5-8.

²Exhibit II, U.S. Department of State, Bureau of Consular Affairs, *Consular Information Sheet on Morocco*, dated February 21, 200, at 1-2.

³*Id.* at 3.

_____The SOR admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 44-year-old married man. Although he has children, the number is unknown from the record. He has a master's degree in computer science, earned from an American university in 1991.

Applicant is originally from Morocco. He emigrated to the United States approximately 18 years ago, and became a naturalized citizen in 2004.⁴ His mother, brother, and sisters are Moroccan citizens and residents.⁵ His father is deceased. His parent-in-laws, brother-in-law, and sister-in-law are Moroccan citizens and residents. He has traveled to Morocco eight times since June 2002 to visit them.

Applicant owns property valued at approximately \$400,000 in Morocco. He inherited it from his father after his death in 2002.⁶ He maintains a savings account in a Moroccan bank with an approximate \$200,000 balance, and a checking account in a Moroccan bank with an approximate \$1,200 balance.⁷ He also has approximately \$3,000 in a checking account in France.

Applicant is the majority owner of an information technology company. His brother-in-law owns a company in Morocco that contracts with several Moroccan government agencies.⁸ Applicant's company has a business relationship with his brother-in-law's company. Specifically, the brother-in-law's company will enter into a contract with a Moroccan government agency to supply information technology hardware, and it will then purchase the hardware from various suppliers including Applicant's company.⁹ Applicant's brother-in-law's company will only purchase the hardware from his company if he can provide it at a competitive price. Otherwise, the company uses other suppliers.¹⁰ Applicant's company derives less than 10 percent of its income from its business relationship with his brother-in-law's company.¹¹ Neither Applicant nor his brother-in-law has any ownership interest in the other's respective companies.

Applicant's company also has contracts with foreign companies in Germany and Canada. It is unclear from the record whether Applicant's company constitutes his principal employment, or whether he needs a clearance in his capacity as its majority stakeholder.

⁴Exhibit 4 at 5.

⁵Answer at 1.

⁶Exhibit 6 at 2.

⁷Answer at 2.

⁸Exhibit 6 at 3.

⁹*Id.*

¹⁰*Id.*

¹¹*Id.* at 4. The record is unclear with respect to whether this is net income or gross income.

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they 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).

Because the entire process is a 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. Specifically these are: (1) the nature 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 age of the applicant; (5) the extent to which the 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.

The following adjudicative guidelines are raised:

Guideline B - Financial 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.

Guideline L - Outside Activities: Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."¹² In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate,

¹²See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Guideline B

Several of Applicant's family members are citizens and residents of Morocco, where a heightened risk of exploitation exists because of its questionable human rights record and recent history of terrorist activity. He has traveled there several times over the past five years to visit them, and has a business relationship with one of them, his brother-in-law. Applicant's contacts with these family members in conjunction with Morocco's political characteristics generate a security concern under Foreign Influence Disqualifying Condition (FC DC) 7 (a).¹³

Under Foreign Influence Mitigating Condition (FC MC) 8 (a), applicants with relatives or acquaintances in foreign countries where a heightened risk of exploitation exists can mitigate the security risk if they can demonstrate that the nature of their relationships, or the positions or activities of those relatives or acquaintances are such that it is unlikely that any attempted exploitation would occur. Here, Applicant provided no such information. Absent any of this information to consider, I cannot apply FC MC 8 (a).

Applicant's business relationship with his brother-in-law, his substantial Moroccan bank accounts, and his Moroccan property interests trigger the application of FC DC 7(e).¹⁴ He has no financial interest in his brother-in-law's company, nor does his brother-in-law have any financial interest in his company. Although Applicant's company sometimes sells supplies to his brother-in-law's company that are ultimately used to fulfill the execution of several of his brother-in-law's contracts with Moroccan government agencies, he does not have any direct, contractual relationship with the Moroccan government. He is one of a number of suppliers with whom his brother-in-law's company contracts. Applicant's company's business relationship with his brother-in-law's company constitutes less than 10 percent of Applicant's company's income. FC MC 8 (f) applies to Applicant's business relationship with his brother-in-law.¹⁵

Conversely, FC MC 8 (f) does not apply to Applicant's Moroccan bank accounts and the property he inherited from his father. They total in excess of \$600,000 USD. He offered no description of the property, nor any information about the bank accounts for me to consider.

¹³Contact 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.

¹⁴A 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.

¹⁵The value or routine nature of the foreign business, financial or property interests is such that [it] is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The government submitted no evidence that Applicant's French checking account and his German and Canadian contracts create a heightened risk of exploitation. Consequently, I conclude that they generate no foreign influence security concerns.

Guideline L

Applicant's business relationship with his brother-in-law's company raises the issue of whether Outside Activities Disqualifying Condition (OA DC) 37(a)(2) applies.¹⁶ There is no record evidence of Applicant's job duties at his principal place of employment. Therefore, I cannot conclude that Applicant's business relationship with his brother-in-law poses a conflict of interest with his primary employment. Moreover, as discussed above, Applicant's business relationship with his brother-in-law accounts for less than 10 percent of his company's income. There are no Guideline L security concerns.

Whole Person Concept

Having admitted all of the allegations in the SOR regarding his relatives, Applicant had the burden of proving they do not create a security risk. He provided little evidence for me to evaluate in his Answer, and did not respond to the FORM, despite being given an opportunity to do so. Consequently, he failed to meet his burden, and I conclude that his foreign relatives generate an unacceptable security concern. Clearance is denied.

FORMAL FINDINGS

Paragraph 1 – Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.j:	Against Applicant
Subparagraph 1.m-1.n:	For Applicant
Paragraph 2 - Guideline L:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

DECISION

¹⁶Any . . . service, whether compensated or volunteer, with any foreign national, organization, or other entity.

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.

Marc E. Curry
Administrative Judge