



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00642
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

10/10/2014

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On February 27, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the basis for its decision to deny his application for a security clearance, citing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on August 15, 2014.<sup>1</sup> The FORM was mailed to Applicant and he received it on September 10, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional

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<sup>1</sup>The Government submitted nine items in support of its case.

documentation. The case was assigned to me on October 2, 2014. Eligibility for access to classified information is granted.

### **Procedural and Evidentiary Rulings**

Department Counsel requested that I take administrative notice of certain facts relating to Morocco. The request and the attached documents are included in the record file. The facts administratively noticed are set out in the findings of fact, below.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline B. (Foreign Influence). His admissions are incorporated in my findings of fact. I make the following findings:

#### **Foreign Influence**

Applicant is a 40-year-old man who was born in Morocco. In 1996, he received a degree in languages from a college in Morocco. He has attended college courses in the United States, but he has not obtained a diploma. In August 1999, he came to the United States sponsored by his first wife. Applicant became a naturalized American citizen in 2005. (Item 1) He married his first wife, who was an American citizen. He has one daughter from his first marriage. (Item 4) When Applicant and his first wife divorced almost a year later, Applicant's wife could not take care of her daughter. Applicant was working as a restaurant manager and worked long hours. He decided that he could not take care of his daughter in a proper fashion by himself. He and his ex-wife agreed to send their daughter to Morocco to live with Applicant's mother. He supported his daughter, who is a U.S. citizen, by sending money to his mother so that she could provide for the child. His daughter still resides in Morocco, although Applicant intends to bring her to the United States.

Applicant remarried in July 2010 to a woman who is a Moroccan citizen and resident. Applicant began the process of sponsoring his second wife to live in the United States. For some reason, the process was delayed. His second wife applied for a U.S. visa in 2010. She would have proceeded directly to the United States; however, Applicant received a job as a linguist for the U.S. military in Afghanistan. Applicant deployed to Afghanistan in December 2, 2011. His second wife agreed to wait for him in Morocco until he completes his work in Afghanistan. Applicant and his second wife have two sons. Since his wife speaks French and not English, it was agreed that she and Applicant's two sons would remain in Morocco. They live with Applicant's mother. Applicant supports his second wife and his two sons by sending money to them. His two sons are U.S. citizens.

Applicant has worked as a linguist (CAT II) with mission-essential companies for three years. He speaks fluent Arabic, French, and English. Applicant has lived and

worked as a linguist on U.S. Army installations in Afghanistan. He has completed three years of work as an interpreter in an active combat zone.

Applicant has family members who are citizens of Morocco. His mother is a citizen and resident of Morocco. She is 66 years old. She cares for Applicant's children. Applicant intends to bring his mother to the United States when he completes his assignment in Afghanistan. She has visited Applicant in the United States. Applicant maintains contact with his immediate family on a daily-to-weekly basis.

Applicant's mother-in-law and father-in-law are citizens and residents of Morocco. They are in their 60's. Applicant does not maintain any contact with them except for a holiday greeting. His father-in-law is a farmer and his mother-in-law is a housewife.

Applicant has a brother and three sisters who are citizens and residents of Morocco. His mother-in-law, father-in-law, and four brothers-in-law are citizens and residents of Morocco.

Applicant owns a home in the United States. He also owns an automobile. He worked for many years in the restaurant business in the United States. He has total assets of about \$105,000. He wants to live in the United States and build a future for his wife and three children. (Response to FORM)

Applicant's linguistic and cultural advisory skills have been noted in Certificates of Appreciation. (Response to FORM) He went on missions with the U.S. Army from 2011 until the present. He has willingly put himself in danger on many occasions in order to help the United States. He has participated in more than 1,000 missions with the U.S. military.

There is no evidence in the record that Applicant has breached any security policies or procedures while in Afghanistan. He submitted seven letters of appreciation for his work in the past three years. (Response to FORM) All letters attest to his dedication and skill in providing a great service.

A commanding officer who has worked with Applicant in Afghanistan recommends him for his professional and loyal support. "His tireless work ethic and steady patience during a variety of combat operations demonstrated his skills as an interpreter and a high-level of character." He states that Applicant has been trusted to pass sensitive information to Jordanian military personnel to coordinate missions against the Taliban insurgency. Applicant's leadership skills are also noted. He is recommended for a position as an instructor of Special Forces students during the Special Operations Language training portion of the Special Forces Qualification Course. (Response to FORM, Letter dated January 2014)

Applicant renounced his Moroccan citizenship and returned his Moroccan passport in February 2011. A bank account he had in Morocco is now closed. He has no other accounts in Morocco.

## Administrative Notice

I take administrative notice of the following facts about Morocco. Morocco is a moderate Arab state which maintains close relations with Europe and the United States. It was the first Arab state to condemn Iraq's invasion of Kuwait in 1990 and sent troops to help defend Saudi Arabia. Morocco was among the first of the Arab and Islamic states to denounce the September 11, 2001 terrorist attacks in the United States and declare solidarity with the American people in fighting terrorism.

There is the potential for terrorist violence against U.S. interests and citizens in Morocco. Morocco's terrorist threat continues to stem largely from the existence of numerous small, independent violent extremist cells. In the past decade, Moroccan nationals have been implicated in terrorism at home and abroad.

In May 2013 suicide bombers attacked five Western and Jewish targets in Casablanca, killing themselves and 33 others, and injuring more than 100. Moroccan officials regularly report that they have terrorist cells plotting attacks against government and military institutions, foreigners, and tourist sites.

## Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify an applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to an applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline B (Foreign Influence)**

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “contact 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.” AG ¶ 7(a). A disqualifying condition also may be raised by “connections to a foreign person, group, government, or country

that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information." AG ¶ 7(b). Under AG ¶ 7(d) "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion" is another disqualifying condition. Finally, AG 7 ¶ (e) "a 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" raises a disqualifying condition."

Applicant's mother, second wife, mother-in-law and father-in-law, and siblings are citizens and residents of Morocco. He maintains regular contact with them and he has visited them in Morocco.

Applicant's three children reside in Morocco, but are U.S. citizens. They are cared for by his mother and his second wife. His second wife was in the process of coming to the United States, but Applicant took an assignment as a linguist for the U.S. military in Afghanistan. By agreement, his wife remained in Morocco to wait for Applicant. He sends money to his spouse and his mother so that they can provide for the three children.

Applicant has worked very hard since coming to the United States. Despite the fact that he has a degree in languages, he worked in a restaurant business working long hours so that he could provide for his first child who lives in Morocco. He also continued his education and has taken college courses. He is advancing his career opportunities.

He has lived in the United States since 1999, and became a U.S. citizen in 2005. He married a U.S. citizen and had a daughter. However, when he and his first wife divorced, she did not want to take care of her daughter and Applicant was working long hours and could not give his daughter the care she needed. He sent the child to live with his mother in Morocco. His second wife could create a potential conflict of interest between his security obligations and his desire to help her, only in a situation wherein they were taken hostage or otherwise threatened with harm if Applicant did not cooperate. Applicant has maintained regular contact with his family; however, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his family members in Morocco. Based on this evidence, AG ¶¶ 7(a), (b), (d), and (e) are raised.

Since the Government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), (d), and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information

from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record 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, or the country is known to conduct intelligence operations against the United States.

Security concerns under this guideline can be mitigated by showing that “the nature of the relationships with foreign persons, the country in 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 U.S.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, security concerns can be mitigated under AG 8(b) if “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, 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 has been in the United States since 1999, and he has been a naturalized U.S. citizen since 2005 . He has a home in the United States. His children are U.S. citizens. His second wife is in the process of coming to the United States to live with Applicant. He has no desire to return to live in Morocco. Applicant maintains regular contact with his extended family and has visited Morocco. He considers this is his duty to support his family.

Applicant explained that he loves and appreciates the fact that he is a U.S. citizen. He renounced his citizenship and surrendered his Moroccan passport. His mother has visited the United States and is eager to come to the United States. He believes he has much to offer the United States. He states that his family would never betray the United States.

Applicant’s work as an interpreter and cultural advisor supported the U.S. military mission in Afghanistan, not the work of those who seek to destroy the growing democracy in Afghanistan. The new Afghanistan government relies upon the United States for support, both financially and militarily, as it moves forward with a new form of

government. Since working as an interpreter with the Army for several years, neither Applicant nor his family has been pressured by any organization to provide any type of information, classified or otherwise, about the United States.

In every case where family members live overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, there is a heightened risk for exploitation, inducement, manipulation, pressure, or coercion. Applicant has significant ties to Morocco. He has helped his family financially for many years while living in the United States. He is close to his family, which is laudable. AG ¶ 8(a) is not established.

Applicant wants to help the United States. He has unique experience and has participated in over 1,000 missions as an interpreter, working side-by-side with the United States and other special forces. He speaks fluent French, Arabic, and English. There is nothing about the nature of Applicant's relationships with his family members in Morocco or the positions or activities of those persons that aligns them with the Moroccan government. Applicant has presented sufficient information to mitigate the burden in this case.

Applicant wrote about his undivided loyalty to the United States. Based on the facts in this case, it is clear that he can be expected to resolve any conflict of interest in favor of the U.S. interest. He endured dangerous conditions in Afghanistan on behalf of the U.S. Army. He has high recommendations from the U.S. military. He has established application of AG ¶ 8(b) and 8(c).

Like many countries around the world, including the United States, Morocco has experienced terrorist attacks. Some of these attacks were directed against American interests, and personnel in Morocco. In response to the continuing terrorist threats in Morocco, its authorities have disrupted groups seeking to attack U.S. or Western-affiliated and Moroccan government targets, and have arrested numerous individuals associated with international terrorist groups.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

The Appeal Board requires the whole-person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family ties to the U.S. relative to his or her ties to a foreign country; his or her social ties within the U.S.; and, many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Certain circumstances weigh against Applicant in the whole-person analysis. First, Applicant has a wife, mother, and in-laws who are citizens of Morocco. He has extended family with whom he is in frequent contact. He sends money to his mother and wife to support his three children who are U.S. citizens. He sees this as a temporary situation. Terrorists could attempt to use Applicant’s family to obtain information. These connections raise the possibility of foreign influence.

A Guideline B decision concerning Morocco must take into consideration the geopolitical situation and dangers there. The United States and Morocco are allies in the war on terrorism.

Applicant is a naturalized U.S. citizen. He has been creating a life in the United States. Granted, he has a unique situation with his second wife and three children. He fully intends to bring them to the United States and has been working hard to earn a living. He has expressed his loyalty to the United States as witnessed by his dedication and work with the U.S. Army. I have no doubts about Applicant having access to classified information. There is no evidence that he has ever taken any action that could cause potential harm to the United States. His military supervisors, who work with him daily in a war zone, praised his work in the cause of freedom in Afghanistan.

Applicant is a loyal U.S. citizen who has worked under dangerous conditions in support of our national defense. The Appeal Board has held that “generally, an applicant’s statements, by themselves, as to what he [or she] would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant’s proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case.”<sup>2</sup>

Applicant served the United States in a dangerous, high-risk situation and his character references establish his significant contributions to U.S. national security.

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<sup>2</sup>ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

While contribution to a company is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case. No. 05-03846 at 6 (App. Bd. Nov. 14, 2006):

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by applicant's more immediate disqualifying conduct or circumstances. See, e.g. ISCR Case. No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No 02-10113 at 4 (App. Bd. Mr. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to the nation's security. See. e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report to a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence. He has met that burden.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a- 1.h:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch  
Administrative Judge