



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 13-00977
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on April 12, 2013. On September 23, 2013, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline B. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on September 30, 2013; answered it on October 19, 2013; and requested a determination on the record without a hearing. On November 13, 2013, Department Counsel requested a hearing before an administrative judge. Department Counsel's request is attached to the record as Hearing Exhibit (HX) II. (HX I is discussed in the below discussion of administrative notice). Department Counsel was

ready to proceed on December 20, 2013, and the case was assigned to me on January 2, 2014. On December 31, 2013, Department Counsel contacted Applicant by email and she agreed to a hearing date of January 15, 2014. On the same day, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the hearing for January 15, 2014. On January 6, 2014, DOHA issued an amended notice of hearing, changing the hearing venue to another courtroom in the same city. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I kept the record open until January 31, 2014, to enable her to submit additional documentary evidence. She timely submitted AX H through L, which were admitted without objection. Department Counsel's comments regarding AX H through L are attached to the record as HX III. DOHA received the transcript (Tr.) on January 30, 2014.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Morocco. The request and supporting documents are attached to the record as HX I. I took administrative notice as requested. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations in the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 30-year-old linguist employed by defense contractors since March 2010. She was deployed to Iraq from March 2010 to September 2011, was unemployed from September 2011 to August 2012, was hired by another defense contractor in August 2012, and is currently deployed to Kuwait. She received an interim security clearance in April 2010 and held it during her deployment to Iraq. (Tr. 67.)

Applicant was born in Morocco. She married a Moroccan citizen in April 2000. She was 17 years old and had not completed high school when she came to the United States in October 2000 with her then spouse, looking for "a better life." (Tr. 28.) She divorced in July 2005.

Applicant became a U.S. citizen in June 2006. She married her current husband in March 2008. Her current husband is a native of Morocco who is a naturalized U.S. citizen. She and her husband have a five-year-old daughter, who is a U.S. citizen but lives in Morocco with Applicant's mother while she is deployed. (Tr. 38.) Her daughter attends daycare but does not go to school in Morocco. (Tr. 42.) Her daughter speaks Arabic and "a little bit of English." (Tr. 76.) Applicant closed her bank account in Morocco and sends money for the care of her daughter by Western Union. (Tr. 44.) Applicant visited her mother and daughter in Morocco for about two weeks in December 2012 and December 2013. (Tr. 56.)

As a result of coming to the United States as a teenager, Applicant's friends all are in the United States. She testified that she thinks in English rather than Arabic. She regards the United States as her country and her home. (Tr. 30.)

Applicant completed cosmetology school in December 2003 and worked for several years as a hair dresser. (Tr. 28.) In March 2010, she was hired by a defense contractor as an Arabic linguist and deployed to Iraq, where she worked with an intelligence unit. Her description of her duties was restricted at the hearing because it was classified. She accompanied troops in the field, wore a military uniform, a Kevlar helmet, and body armor. She did not carry a weapon but received weapons training. She experienced an attack on her unit's compound and has been under hostile fire while "outside the wire." (Tr. 72-74.)

Applicant received three "challenge coins" from her unit because of her outstanding performance under combat conditions. The specific circumstances under which she earned the coins are classified. (Tr. 64.) Photocopies of the coins are at AX J. The transcript does not reflect her demeanor during the hearing, when she submitted the coins as evidence. She held each in her hand, touched it gently, was silent for a moment, and then submitted it in evidence. When I returned each coin to her, she again treated it with the same gesture of affection.

Applicant described her feelings when she returned from Iraq. She testified,

It's not—it wasn't easy for me to be there and see what I've seen and go through whatever I went through, but yet, it just like stays in me. I felt like a patriot. I felt like I am doing something for this country. . . . The feeling of serving with the Army just – it's like tingling. I feel butterflies. I feel like I'm there.

(Tr. 29.)

Applicant stayed home with her husband and daughter for about a year after her Iraq experience, "recovering" from her experience. She then volunteered to serve in Kuwait. She testified, "I missed doing what I was doing. I love what I do and I'm good at it." She is now working with U.S. forces, training Kuwaiti forces. (Tr. 67-69.)

Applicant's parents divorced in the 1990s, and each remarried and had children. (Tr. 46-47.) As a result, Applicant has a large extended family. Applicant's mother, father, stepmother, stepfather, father-in-law, mother-in-law, two brothers, two stepbrothers, two stepsisters, two half-brothers, and three half-sisters are citizens and residents of Morocco. She has one half-brother who is a citizen and resident of France. (GX 2.) She has no siblings in the United States. (Tr. 40.)

Applicant has daily telephone contact with her mother, who cares for Applicant's daughter while she is deployed. (Tr. 41-42.) Their daughter stays with Applicant's mother because her husband is a clothing store manager, working 12-hour days, and is

unable to adequately care for their daughter. (Tr. 38.) Applicant has sponsored her mother for an immigrant visa to the United States. (AX K.)

Applicant's contact with her father, a retired electrician, and her stepmother is limited to yearly holiday greetings. (Tr. 47-48.) She talks to her older brother, who owns an electrical company, about once a month. (Tr. 49.) She talks to her younger brother, a lawyer in the Ministry of Interior for Morocco, about twice a week. (Tr. 52.)

About once a month, Applicant talks to her stepfather, a vegetable wholesaler, and her two half-sisters and one half-brother, who are students and live with her mother. (Tr. 43-44, 53; GX 2.) About once a year, she talks to with her oldest half-sister and oldest half-brother, who are students, and her stepsisters and stepbrothers. She has yearly contact with her father-in-law, a retired Moroccan customs agent; her mother-in-law, a housewife; and her two brothers-in-law, one of whom is a restaurant chef and the other a taxi driver. (Tr. 60-61; GX 2.) She has no contact with her former parents-in-law. (Tr. 57.)

An Army chief warrant officer (W-2), serving as the chief of human intelligence operations for a task force in Iraq, submitted a letter on Applicant's behalf. He stated that Applicant's performance "always outperformed expectations." She displayed a high level of maturity and a constant desire to improve her skills. She was ready to go on missions "outside the wire" with little or no notice. Her understanding of the language and the "minute nuances" of local culture was an "unmatched quality in the Human Intelligence profession." (AX A.) In addition to the challenge coins given to her by her immediate supervisors, she received a certificate of appreciation from the brigade commander. (AX B.)

Applicant's immediate supervisor in Kuwait also submitted a letter. He stated that Applicant works in harsh and unpleasant conditions, where she operates and lives "just like every deployed soldier in the region." She always performs "above and beyond" to support the mission. Her supervisor describes her as "dependable, reliable, hard-working, conscientious, honest, peace-loving, courteous, and trustworthy." (AX I.) A coworker in Kuwait describes her as "a stellar performer." (AX H.) Another coworker states, "The natural interpreter that she is, and the resilient person that I have come to know her to be, she spares no effort in bridging the gap between our soldiers and the host countrymen, in addition to showing no signs of weakness when it comes to dealing with the hazardous and austere working and living conditions we have had to deal with." (AX L.)

Morocco is a constitutional monarchy with a bicameral parliament and an independent judiciary. There is a potential for terrorist violence against U.S. interests and citizens in Morocco. The Moroccan authorities aggressively disrupt groups targeting U.S. or Western-affiliated and Moroccan government agencies. The terrorist threat in Morocco stems largely from numerous small, independent, violent extremist cells that are isolated from each other and limited in both capabilities and international connections. Morocco and the United States work closely on counterterrorism efforts.

Morocco has a comprehensive counterterrorism program of vigilant security measures, regional and international cooperation, and counter-radicalism policies. Morocco has a three-pillar strategy to counter violent extremism: (1) a law-and-order approach, working closely with the United States and other international and regional partners to strengthen its security and counterterrorism capabilities; (2) accelerated education and development initiatives for youth and expanded legal rights and empowerment of women; and (3) a national strategy to confirm and institutionalize Morocco's widespread adherence to the Maliki school of Islam.

Morocco is a major non-NATO ally of the United States. It is a member of several regional and international organizations that combat money laundering and financing of terrorist organizations. It cooperates with European and African partners by sharing information, conducting joint operations, and participating in activities to increase their military and civilian capabilities.

Morocco's most significant human rights problems are lack of citizens' right to change the constitutional provisions establishing a monarchical government, corruption in all branches of government, and widespread disregard for the rule of law by security forces. A revised constitution was adopted in July 2011, but there has been little or no progress passing the laws necessary to implement the constitutional changes. However, elections in November 2011 were considered by international and domestic observers to be credible and relatively free from irregularities. Crime in Morocco is a serious concern, particularly with respect to aggressive panhandling, pick-pocketing, purse-snatching, thefts from occupied vehicles stopped in traffic, and harassment of women.

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 have 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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 the 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant 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).

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 SOR alleges that the following members of Applicant’s family are citizens and residents of Morocco: her mother (¶ 1.a), father (¶ 1.b), stepmother (¶ 1.c), stepfather (¶ 1.d), two brothers (¶ 1.e), two stepbrothers (¶ 1.f), two stepsisters (¶ 1.g), two half-brothers (¶ 1.h), three half-sisters (¶ 1.i), father-in-law and mother-in-law (¶ 1.k). It also alleges that she has a half-brother who is a citizen and resident of France (¶ 1.j).

The security concern under this guideline 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.

Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 7(a): 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; and

AG ¶ 7(b): 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(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

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, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Morocco is an ally of the United States and a strong partner in combating terrorism. Although terrorist groups have attempted to make inroads into Morocco, they have remained small, disorganized, and without significant capabilities or international connections, due in large part to the aggressive and effective actions of Moroccan authorities. Human rights violations are a problem, especially in the areas of government corruption and abuse of authority by security forces. Crime is a problem, especially in large cities, but it consists mostly of property crimes, *i.e.*, pickpocketing, purse-snatching and the like. The administrative notice materials submitted by Department Counsel do not reflect any Moroccan efforts to target the United States for military or economic espionage, nor do they reflect concerns about kidnapping or killing U.S. citizens by Moroccan authorities or terrorist groups to obtain sensitive military information.

When foreign family ties are involved, 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). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

It is not necessary for the Government to prove affirmatively that a country specifically targets U.S. citizens in order to raise Guideline B security concerns. ISCR Case No. 08-09211 (App. Bd. Jan. 21, 2010). Furthermore, factors such as the family members' obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant's circumstances post a security risk. ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009).

Applicant has close ties of affection and obligation to her mother and her daughter. Her ties to her extended family of stepbrothers, stepsisters, half-brothers, and half-sisters are less strong, but she nevertheless has feelings of obligation toward them.

The presence in Morocco of small, disorganized terrorist groups with limited international connections is not sufficient to establish the "heightened risk" under AG ¶ 7(a) or the potential for a conflict of interest under AG ¶ 7(b). Terrorism is a threat to all countries, including the United States, as demonstrated by the recent Boston Marathon bombing. However, the abuses by some Moroccan security forces and corruption in the Moroccan government establish a heightened risk of attempts to coerce or influence Applicant through her immediate family members, especially her mother and her daughter, and a potential conflict of interests between the interests of her family and the interests of the United States. The evidence showing a heightened risk and potential

conflict of interest is not strong. However, mindful of my obligation to resolve doubt in favor of national security, I am satisfied that it is sufficient to establish AG ¶¶ 7(a) and 7(b).

Three mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(a): 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(b): 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; and

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.

For the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b), I conclude that AG ¶ 8(a) is not established. However, I am satisfied that AG ¶ 8(b) is established by Applicant's deep and longstanding relationships and loyalties in the United States. While holding an interim clearance, Applicant demonstrated her trustworthiness and devotion to the United States while serving under combat conditions in Iraq, participating in classified operations, and providing significant contributions to national security. During the hearing, she avoided talking specifically about her actions in Iraq, even though they were significant, stressful, and frightening.

Most acts of heroism among military combatants are motivated by an intense sense of loyalty and obligation to fellow combatants rather than a more abstract sense of loyalty to country. Applicant's demonstrations of loyalty and affection for the U.S. forces with whom she served were obvious and impressive.

Generally, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying circumstances. However, where an applicant has established by credible, independent evidence that his or her 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 national security, such circumstances give credibility to an applicant's assertion that he or she will recognize, resist, and report a foreign power or terrorist's attempts at coercion or exploitation. In this case, Applicant has a track record of complying with security regulations and

procedures in high-risk circumstances in which she made significant contributions to national security. See ISCR Case No. 07-06030 at 3 (App. Bd. Jun. 19, 2008); ISCR Case No. 06-25928 at 4 (App. Bd. Apr 9, 2008). Thus, I conclude that AG ¶ 8(b) is established.

Applicant has frequent contact with her mother, daughter, and brothers; less frequent contact with her stepfather, half-sisters, and half-brothers; and annual contact with her father, older half-brother, one half-sister, and her half-brother who lives in France. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted this presumption for her contacts with her mother, stepfather, brothers, and the half-sisters and half-brothers who reside with her mother and stepfather. However, AG ¶ 8(c) is established for those family members with whom she has only annual contact.

Whole-Person Concept

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. In applying 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 relevant 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.

I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was sincere, intense, and credible at the hearing. She has put her life on the line for U.S. military personnel and distinguished herself as a linguist under combat conditions. After spending a year recovering from the stress of her experience in Iraq, she volunteered to serve in Kuwait, where she is now serving under austere circumstances. She is passionately dedicated to the United States, its values, and its national security.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.k: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge