



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



In the matter of:)	
)	
)	ISCR Case No. 14-05077
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

10/13/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence and foreign preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 5, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and C (foreign preference). The action was taken under Executive Order (EO) 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 the DOD on September 1, 2006.

Applicant responded to the SOR on December 23, 2014, and requested a hearing before an administrative judge. The case was assigned to me on June 24, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2015, scheduling the hearing for July 23, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on July 31, 2015.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about the Kingdom of Morocco. The request was not admitted in evidence but was included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. Of note is that Morocco is a constitutional monarchy with a bicameral parliament and independent judiciary. The potential for terrorist violence against U.S. interests and citizens exists in Morocco. Moroccan nationals have been implicated in terrorism abroad and at home. Morocco also continues to have human rights problems.

Evidence

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that were marked collectively as Applicant's Exhibit (AE) A and admitted without objection.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor. He has a bachelor's degree. He married in 2006 and divorced in 2009. He married again in 2010. He has a three-year-old child, and his wife recently gave birth to their second child.¹

Applicant was born in Morocco to Moroccan parents. He attended college and earned his degree in Morocco. He came to the United States in 1999, and he became a U.S. citizen in 2005. His wife is a Moroccan citizen living in the United States as a permanent resident.²

Applicant's mother is deceased. He has a large number of half-siblings. His father, stepmother, parents-in-law, half-siblings, and other extended family members are citizens and residents of Morocco. There is no indication that any of his family members have any direct ties to the Moroccan government or to any terrorist organization.³

From 2007 to 2010, Applicant worked overseas under combat conditions as a linguist for defense contractors. Applicant submitted commendatory material and letters

¹ Tr. at 23-26, 40, 47; GE 1, 3.

² Tr. at 23-26, 40; GE 1, 3.

³ Tr. at 33-34, 53-54; Applicant's response to SOR; GE 1, 3.

from U.S. military and civilian personnel, who praised his character, abilities, and service to the mission.⁴ One senior U.S. official wrote:

[Applicant's] contributions are too numerous to mention. Because of his mastery of the both Arabic and English languages as well as his complete understanding of the Arab culture, he is in high demand by many members of the Task Force to interpret for them. This equates into a very busy schedule for [Applicant] that has kept him engaged at odd hours and at perilous places, one of the hazards of the job. Despite the danger [Applicant] has never wavered or shied away from a single mission.⁵

Applicant met and married his wife in Morocco in 2010. She was unable to immigrate to the United States at that time, so he remained in Morocco. He renewed his Moroccan passport in 2010, so that he could remain in Morocco with his wife. Their older child was born in Morocco in 2011. Applicant opened a bank account in Morocco using his U.S. passport. He transferred money that he had earned during his overseas assignment to the account. He purchased an apartment in Morocco in 2010 for the equivalent of about \$50,000 in U.S. currency. He lived in the apartment with his wife and child while he was in Morocco. He had about \$40,000 in the bank account after the apartment purchase.⁶

Applicant returned to the United States in 2012. He has not returned to Morocco since he left in 2012. His wife continued to live in the apartment with their child until she immigrated to the United States in 2014. Their youngest child was born in the United States. His wife plans to apply for U.S. citizenship as soon as she is eligible.⁷

Applicant surrendered his Moroccan passport to his facility security officer (FSO) in May 2014. He always traveled on his U.S. passport and only used the Moroccan passport for identification purposes. The passport expired in August 2015, and he does not intend to renew it. He is willing to renounce his Moroccan citizenship.⁸

Applicant intends to sell his Moroccan apartment. He owns a townhouse in the United States. He plans to sell the townhouse and the Moroccan apartment and use the proceeds to buy a house in the United States. His wife brought about \$9,000 with her when she came to the United States. He is not concerned about the remaining money in the Moroccan bank because he opened the account as a U.S. citizen and does not

⁴ Tr. at 23-24, 36-38; GE 1, 3.

⁵ AE A.

⁶ Tr. at 24-25, 29-33, 41-43, 51; Applicant's response to SOR; GE 1, 3.

⁷ Tr. at 23, 26-29, 39; Applicant's response to SOR; GE 1, 3.

⁸ Tr. at 27-33, 45-47 Applicant's response to SOR; GE 2.

have an immediate need for the money. He plans to take most of the money the next time he visits Morocco and transfer it to a U.S. financial institution.⁹

Applicant credibly testified that his loyalty is to the United States. He is appreciative of the opportunities the United States has given him and that his children can grow up in the United States as U.S. citizens. None of his family in Morocco knows that he served with the U.S. forces overseas for three years. He stated that he would immediately report to U.S. authorities any attempt to use his family or property in Morocco against him.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

⁹ Tr. at 42-45, 54; Applicant's response to SOR.

¹⁰ Tr. at 27, 34, 48, 52-56; Applicant's response to SOR; GE 3.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern for foreign preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed a Moroccan passport while a U.S. citizen. He was able to stay and live in Morocco because of his Moroccan citizenship. AG ¶ 10(a) is applicable. The renewal of his Moroccan passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of his Moroccan citizenship.

There is no evidence that Applicant’s foreign property interests were based on his Moroccan citizenship. That information raises the general concern under AG ¶ 9.

Conditions that could mitigate foreign preference security concerns are provided under AG ¶ 11. The following are potentially applicable:

(a) dual citizenship is based solely on parents’ citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant exercised his Moroccan citizenship by obtaining a Moroccan passport while a U.S. citizen. Therefore, his dual citizenship is not based solely on his parents' citizenship or birth in a foreign country. AG ¶ 11(a) is not applicable. He surrendered the passport to his FSO. The passport expired in August 2015, and he does not intend to renew it. He is willing to renounce his Moroccan citizenship. AG ¶¶ 11(b) and 11(e) are applicable.

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (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;
- (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;
- (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; and
- (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.

Applicant's father, stepmother, parents-in-law, half-siblings, and other extended family members are citizens and residents of Morocco. His wife is a Moroccan citizen living in the United States as a permanent resident. The potential for terrorist violence against U.S. interests and citizens exists in Morocco. Moroccan nationals have been implicated in terrorism abroad and at home. Morocco also continues to have human rights problems.

Applicant's foreign relatives create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(d) are applicable.

Applicant's Moroccan apartment and bank account were alleged under Guideline C, not Guideline B. AG ¶ 7(e) would have been applicable had the foreign property been alleged under Guideline B.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.; and

(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.

I considered the totality of Applicant's ties to Morocco. 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.¹¹

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant's wife and children are in the United States. His children are U.S. citizens and his wife is a permanent resident waiting to apply for U.S. citizenship. Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He credibly testified that he would report to security officials any attempt to use his family members against him. The Appeal Board has stated that such testimony, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security.¹² In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue:

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 the purposes of refuting, mitigating, or extenuating the security concerns raised by that 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 5 (App. Bd. Mar. 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 had made a significant contribution to the national 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 a foreign power's attempts at coercion or exploitation.

I find, because of Applicant's relationships and loyalties in America, that he can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

¹² ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He credibly testified that he would report any attempt to use his family members to coerce him to reveal classified information. The Appeal Board has held that "generally, an applicant's statements, by themselves, as to what he 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."¹³ The complicated state of affairs in Morocco places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. 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. I conclude Applicant mitigated the foreign influence and foreign preference security concerns.

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 C:	For Applicant
Subparagraphs 1.a-1.f:	For Applicant

¹³ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

Paragraph 2, Guideline B: For Applicant

Subparagraphs 2.a-2.k: 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.

Edward W. Loughran
Administrative Judge