DATE: June 22, 2001

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 00-0463

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Attorney-Advisor to Department Counsel

Peregrine D. Russell-Hunter, Esquire, Chief Department Counsel

FOR APPLICANT

Roy Tesler, Esquire

SYNOPSIS

Thirty-four year old Applicant's use of a Moroccan passport--since expired--on one occasion in 1996, after he became an American citizen, while of concern, cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances to determine the possible existence of a foreign preference. The foreign citizenship and residency status of Applicant's parents and siblings--none of whom are agents of a foreign government or in positions to be exploited by those governments--does not constitute an unacceptable security risk. Under the specific facts in evidence herein, the Government's security concerns have been mitigated by Applicant's strong preference for, and demonstrated loyalty and allegiance to, the United States, over Morocco. Clearance is granted.

STATEMENT OF THE CASE

On September 27, 2000, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *"Safeguarding Classified Information Within Industry,"* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *"Defense Industrial Personnel Security Clearance Review Program"* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 9, 2000, but notarized on October 10, 2000, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Claude R. Heiny II, on November 22, 2000, but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on December 28, 2000. A notice of hearing was issued on January 10, 2001, and the hearing was held before me on February 6, 2001.

At the close of that session, Department Counsel moved to amend the SOR to conform to the evidence presented, and an objection was interposed by Applicant. The parties were afforded an opportunity to respond and present argument on the motion, and the matter was continued *sine die*. Another notice of hearing was issued on arch 28, 2001, and the continuation of the hearing was held before me on April 18, 2001. During the course of the combined sessions, five Government exhibits and four Applicant exhibits, and the testimony of three Applicant witnesses (including the Applicant), were received. The initial verbatim transcript (Tr.I) was received on February 13, 2001, and the second verbatim transcript (Tr.II) was received on April 26, 2001.

RULINGS ON PROCEDURE

At the commencement of the Government's case Department Counsel requested Official Notice be taken of United States Code Service Title 8 Aliens and Nationality, Chapter 12 Immigration and Nationality Adjustment and Change of Status Nationality Through Naturalization, Section 1448 Oath of renunciation and allegiance; as well as the passport policy clarification issued in August 2000 by the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C^3I). Pursuant to Rule 201, Federal Rules of Evidence (F.R.E.), I took Official Notice as requested, over the objections of Applicant.

Applicant also objected to the retroactive application of the policy clarification set forth in the ASD/C^3I memorandum and was offered an opportunity to submit briefs on the matter. He eventually chose not to do so.

As stated above, at the close of the initial session, Department Counsel moved to amend the SOR to conform to the evidence presented. Specifically, she sought to amend paragraph 3 thereof by adding a subparagraph "b." The newly requested subparagraph was to be as follows:

You falsified on a SF 86 executed by you on March 3, 1999, on which you were required to reply to the following question #16. **"Foreign Countries You Have Visited** Have you traveled outside the United States on other than official U.S. Government orders in the last 7 years? (Travel as a dependent or contractor must be listed.) Do not repeat travel covered in modules 4, 5, and 6." on which you answered "Yes" and listed one trip from June 3, 1996 to December 7, 1996 to Morocco when in fact you well knew and sought to conceal you made an additional trip to Morocco from January 11, 1995 to January 21, 1995.

I granted the motion to amend, over the objections of Applicant. The gravamen of Applicant's objection to the procedure set forth in Enclosure 3 of the Directive[(1)] which permits amendment of the SOR was that it was violative of Applicant's right to due process and administrative due process of law. Applicant's contention was not supported by any legal citations, and this is not the appropriate forum to address "constitutional" arguments.

During final argument, Department Counsel conceded Applicant had previously furnished a truthful response to an inquiry in his Security Clearance Application--pertaining to one particular purported financial delinquency--as well as subsequent evidence of extenuation and explanation regarding subparagraph 3.a.(1) of the SOR, sufficient to mitigate and overcome the Government's case with respect to that allegation. Department Counsel also conceded the remaining allegation (subparagraph 3.a.(2) of the SOR) pertaining to a purported financial delinquency was "probably not material" and minimized its national security significance.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign preference under Guideline C (subparagraphs 1.a. and 1.b.), as well as the factual allegation pertaining to foreign influence under Guideline B (subparagraph 2.a.). Those admissions are incorporated herein as findings of fact. He denied all of the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 3.a.(1), 3.a.(2), and 3.b.).

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 34 year old male employed by a defense contractor, and he is seeking to obtain a security clearance, the

level of which has not be revealed.

Applicant was born in 1967 in Morocco--a nation whose interests are not inimical to the United States. Over the next 19 years, while residing with his family, he exercised the rights and privileges, and performed the responsibilities, of a citizen of Morocco. After graduation from a Moroccan high school, in 1987, he moved to the United States to pursue higher education.(2) He received his undergraduate degree from a university in the United States in August 1992, and his MBA degree from another university in the United States in 1997.(3) While obtaining his education, as well as thereafter, Applicant was employed in a variety of positions in the United States.

In January 1995, while employed in the United States, Applicant used his Moroccan passport when he took a 10 day pleasure trip to visit his family in Morocco.(4) After residing in the United States for about eight years, in March 1995, and upon completing the required immigration and naturalization citizenship process, Applicant became a naturalized citizen of the United States.(5) He is now a dual citizen of the United States and Morocco. At the time he took his oath of allegiance and was granted his new citizenship, the United States Immigration and Naturalization Service (INS) asked if he wanted to change his name and/or keep his Moroccan passport.(6) He chose to keep both his name and his passport.(7)

Since becoming an American citizen, Applicant has exercised the rights and privileges, and performed the responsibilities, of a citizen of the United States. He registered with the Selective Service System and was assigned a registration number,(8) and obtained, and used, a United States passport.(9) Conversely, Applicant has not accepted any benefits from Morocco, except one, as further described below; has not served in the Moroccan military and is unwilling to do so; has not used his Moroccan citizenship to protect financial or business interests in Morocco; and is not seeking or holding political office in Morocco.(10) Furthermore, he has never voted in a oroccan election.(11)

In June 1996, Applicant again used his Moroccan passport when he took a lengthy pleasure trip to visit his family in Morocco.(12) This time, however, instead of briefly visiting his family and returning to the United States, Applicant remained in Morocco for six months and actually worked in his family's Moroccan-based business as an assistant manager.(13) When Applicant returned to Morocco in 1999 and 2000, he used his United States passport on both occasions.(14)

Applicant's Moroccan passport expired on June 15, 1999, and was not renewed.(15) He has no intention of ever doing so.(16)

Applicant contends his 1996 use of the Moroccan passport was not intended, by him, to state a preference for Morocco over the United States. In 1999, he acknowledged having "a good allegiance towards both countries" but considered the United States as his home and Morocco as simply a place to visit.(17) Applicant is unsure if he is still considered a dual citizen or citizen of Morocco, and if he is, is prepared to renounce his Moroccan citizenship.(18)

Both of Applicant's parents are native-born citizens and life-long residents of Morocco.(19) They own a printing business(20) and are not employees of the Moroccan Government.(21) They last visited Applicant in the United States while on a visit here in the summer of 1999.(22) He also has four brothers and one sister, all of whom reside with their parents in Morocco.(23) Three of his siblings work in the family printing business and two work for themselves.(24) None of his siblings are employees of the Moroccan Government.(25) Applicant also has four cousins, some of whom are permanent non-citizen residents, and some of whom are naturalized citizens of the United States, who reside in the United States.(26) In December 2000, on behalf of Applicant's parents, he submitted petitions to the INS for them to receive permanent non-citizen resident status, based on his United States citizenship.(27)

Applicant was married to a native-born citizen of the United States in 1990, and that marriage lasted until he was divorced in 1997.(28)

In March 1999, while completing his SF 86,[(29)] Applicant addressed a question pertaining to financial delinquencies, ("Are you currently over 90 days delinquent on any debt(s)?"),[(30)] Applicant responded "no." He also addressed another question pertaining to financial delinquencies, ("In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?").[(31)] Applicant responded "yes," and provided the information for two such financial obligations. He included pertinent information regarding financial delinquencies to a large retail chain and a large commercial bank.[(32)]

A Report of Credit generated on him in May 1999[(33)] revealed what appeared to be four such obligations seemingly coming within the scope of the question. One obligation, to a large retail chain in the amount of $959.00[(34)] was 120 days delinquent, and is the one referred to in the SOR at subparagraph 3.a.(1). Another obligation, in the amount of $632.00,[(35)] was considered a bad debt which had been charged off, and is the one referred to in the SOR at subparagraph 3.a.(2). Another obligation, to a large commercial bank in the amount of $1,236.00,[(36)] was 120 days delinquent, and is not referred to in the SOR. The remaining obligation, to the same large retail chain referred to previously in a zero amount,[(37)] was considered 120 days delinquent, but was transferred or sold to an unidentified entity, and is not referred to in the SOR.

Applicant satisfied the delinquent obligation to the large retail chain identified by him on the SF 86 (listed twice under two different creditors in the May 1999 Report of Credit), and as of August 1999,[(38)] the account was considered "settled," with a zero balance.[(39)] He also satisfied the delinquent obligation to the large commercial bank identified by him on the SF 86, and as of August 1999,[(40)] the account was considered "settled," with a zero balance.[(41)] Finally, he satisfied the delinquent obligation to the remaining creditor identified by him on the SF 86, and as of August 1999,[(42)] the account was also considered "settled," with a zero balance.

Applicant subsequently denied intending to deceive or falsify, and noted two of his financial delinquencies were identified elsewhere in the SF 86,[(43)] and he was not aware of the third account at the time he completed the form.[(44)]

Applicant has been employed in his current position by a Government contractor for about one year. His supervisor referred to Applicant by using the terms reliable, trustworthy, honest, truthful, and hardworking.[(45)]

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an

evaluation of the facts of this case:

[GUIDELINE C - FOREIGN PREFERENCE]: 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.

Conditions that could raise a security concern and may be disqualifying include:

(1) the exercise of dual citizenship;

(2) possession and/or use of a foreign passport.

Conditions that could mitigate security concerns include:

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

(2) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(4) individual has expressed a willingness to renounce dual citizenship.

As noted above, on August 16, 2000, ASD/C^3I issued a passport policy clarification pertaining to Adjudicative Guideline C--foreign preference. I have taken Official Notice of the memorandum which states, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. ***Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.*** Modification of the Guideline is not required. (Emphasis supplied)

[GUIDELINE B - FOREIGN INFLUENCE]: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

(1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Conditions that could mitigate security concerns include:

(1) a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

[Personal Conduct - Guideline E]: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

(2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns include:

None apply.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"[(46)] or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness testimony, demeanor, and credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline C, the Government has established its case. Applicant has been portrayed as a person who failed to formally renounce his Moroccan citizenship and acted in such a way as to indicate a preference for a foreign country--in this instance, Morocco--over the United States, and in so doing, he may be prone to provide information or make decisions that are harmful to the interests of the United States. In support of its contentions, the Government has cited Applicant's dual citizenship with Morocco and the United States; and his use of his Moroccan passport.

The Government has alleged Applicant continues to actively "exercise" citizenship of Morocco--derived from his birth in that country; and the United States, facts disputed by Applicant. The evidence of the purported "exercise" of citizenship to support that allegation is one-time use of his Moroccan passport in 1996, after he had become an American citizen. The Government contends his feelings for Morocco, and his use of a Moroccan passport, and even his lengthy stay in Morocco in 1996, are inconsistent with his oath of United States citizenship. When Applicant became a naturalized citizen of the United States, he took an oath "in a public ceremony . . . to renounce and abjure absolutely and

entirely all allegiance to any foreign prince, potentate, state or sovereignty of whom the applicant for U.S. citizenship was before a subject or citizen," and shortly thereafter registered with the Selective Service System to defend the United States, if called upon to do so. That he maintained some degree of affection for Morocco should not be construed as a preference for it over the United States. Congress did not intend that a new citizen such as Applicant should be "required to renounce any sentimental fondness or affection he might have for his native land."[(47)]

Applicant may have intended to renounce his foreign citizenship when he took the oath for United States citizenship, but his subsequent actions in using the previously issued foreign passport, and keeping it until 1999, seemingly indicate his continued allegiance to both countries. His more recent actions in permitting the Moroccan passport to expire in June 1999; vowing not to renew it in the future; and in declaring his willingness to renounce his Moroccan citizenship, if he still has it, would seem more consistent with his contention he considers himself primarily an American citizen. Thus, there is evidence of one foreign citizenship--Moroccan--along with United States citizenship, with no evidence of the *current active* exercise of that foreign citizenship other than the passed one-time use and possession of the foreign passport--until it expired. In my estimation, Applicant's status in this regard falls within foreign preference disqualifying condition (DC) E2.A3.1.2.1., and DC E2.A3.1.2.2., but Applicant also enjoys the benefit of foreign preference mitigating condition (MC) E2.A3.1.3.1., and MC E2.A3.1.3.4.

Obviously, it is of substantial concern Applicant kept and used his Moroccan passport after he became an American citizen. It is clear that possession of a foreign passport cannot be considered merely in isolation, but should be analyzed in light of all the facts and circumstances, "with the adjudicator needing to consider whether the facts and circumstances of possession reasonably indicate the applicant is demonstrating a foreign preference within the meaning of [Guideline] C."[(48)] The record does not support the contention Applicant continued to actively "exercise" his Moroccan citizenship after the expiration of the Moroccan passport. Applicant's citizenship oath, his conscious decision to permit the Moroccan passport to expire, and Applicant's subsequent statements, offer sufficient positive proof of a present intention, or at least a willingness, to renounce his Moroccan citizenship, to the extent it still exists.

As noted above, in August 2000, ASD/C^3I issued a passport policy clarification. The declared intent of the ASD/C^3I memo was "to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport." In this instance, the one-time use of the Moroccan passport as well as the expiration of that passport both occurred before the issuance of the ASD/C^3I memo. The ASD/C^3I memo further states there are no mitigating factors "related to an applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country," a phrase which I construe to relate solely to the use of a foreign passport, and not to mere possession of same. On the other hand, the memo states "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport. . . ." In my view, Applicant has already "surrendered" the passport by allowing it to expire, with no intent to renew it. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline C. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded in favor of Applicant

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, Applicant's parents, and his three brothers and one sister--are not citizens of the United States or may be subject to duress. This situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the Government has cited the fact Applicant's parents and siblings are citizens and residents of Morocco. Based on my review of the evidence, I conclude the security concerns manifested by the Government, in this instance, are largely unfounded.

It is uncontroverted that Applicant's parents and siblings--persons to whom he has close ties of affection--are citizens and residents of Morocco. That simple fact, standing alone, is sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:[(49)]

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of

such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

Applicant's parents and three of his five siblings work in the family printing business in Morocco. The other two siblings work for themselves. There is no evidence to indicate they are involved in any "intelligence work" for the Moroccan Government, and they have no "official ties" to the Moroccan Government. Applicant also has four cousins, some of whom are permanent non-citizen residents, and some of whom are naturalized citizens of the United States, who reside in the United States. These facts, when considered in light of the nature of the government in Morocco--a friendly Kingdom which is not hostile to the United States, and whose interests are not inimical to the United States--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein.

The residence and citizenship of Applicant's family members are clearly of security concern under foreign influence disqualifying condition (DC) E2.A2.1.2.1., but the significance of that ruling is mitigated by the "protection" afforded by foreign influence mitigating condition (MC) E2.A2.1.3.1. It must also be noted Applicant's parents intend to reside in the United States. In this instance, after an examination of the evidence, I determine that Applicant's parents and siblings, considering their citizenship and residency status, do not constitute an unacceptable security risk. Furthermore, their continuing personal relationship is viewed in positive terms, having no security significance. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegation 2.a. of the SOR is concluded in favor of Applicant.

With respect to Guideline E, the Government has failed to establish its case. Applicant has been portrayed as a person who is a potential security risk because he willfully falsified, omitted, and concealed true facts in responses to inquiries pertaining to his financial delinquencies and foreign travel. While the deliberate omission, concealment, or falsification of relevant and material facts from the SF 86 may be grounds for disqualification, in this instance, Applicant has steadfastly denied any willful intent to falsify, omit, or conceal the facts in issue. Applicant noted he responded to the inquiry pertaining to financial delinquencies by identifying two such accounts in the question immediately preceding the one in issue. Common sense would indicate if Applicant admitted financial obligations which were 180 days delinquent, those same obligations would be 90 days delinquent as well. Furthermore, I cannot conceive any possible motivation to deny a 90 day delinquency when there was already an acknowledgment of a 180 day delinquency.

Moreover, as noted above, the Department Counsel conceded Applicant had previously furnished a truthful response to the inquiry in his Security Clearance Application--pertaining to one particular purported financial delinquency--as well as subsequent evidence supporting his position regarding subparagraph 3.a.(1) of the SOR, sufficient to mitigate and overcome the Government's case with respect to that allegation. Department Counsel also conceded the remaining allegation (subparagraph 3.a.(2) of the SOR) pertaining to a purported financial delinquency was "probably not material" and minimized its national security significance. I agree. Accordingly, allegations 3.a.(1) and 3.a.(2) of the SOR are concluded in favor of Applicant.

As for the allegation which was the subject of the motion to amend the SOR, Applicant has steadfastly denied any willful intent to falsify, omit, or conceal his foreign travel in January 1995--a 10 day pleasure trip to Morocco which occurred before he became a citizen of the United States. He contends he listed the most recent travel to orocco--the six month home visit with his parents and siblings--and did not intend to deceive. Applicant offered no explanation other than speculating the 1995 trip may have slipped his mind at the time; or he may have misconstrued the question by reading it literally; or he may have believed he had previously listed such travel elsewhere and misconstrued the caution not to repeat travel covered in other modules. In any event, there is clear evidence Applicant took the trip, but no evidence whatsoever to characterize his failure to list it as anything other than a simple oversight or mistake. There is no evidence the failure to list the 1995 travel was intentional or an effort to deceive the Government.

I had the opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, listen to his testimony, and watch the interplay between himself and those around him. It is my impression Applicant's explanations are both consistent and sincere, and have the solid resonance of truth. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and refuted the Government's case in this regard. Accordingly,

allegation 3.b. of the SOR is concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Paragraph 3. Guideline E: FOR THE APPLICANT

Subparagraph 3.a.(1): For the Applicant

Subparagraph 3.a.(2): For the Applicant

Subparagraph 3.b.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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Robert Robinson Gales

Chief Administrative Judge

1. While Applicant did not specify the provision challenged, it is clear the additional procedural guidance found in paragraph E3.1.17.--the only such provision in Enclosure 3--is the one in issue.

2. *See* Tr.I, at 29.

3. *See* Government Exhibit 1 (Security Clearance Application (SF 86), dated March 3, 1999), at 2.

4. *See* Government Exhibit 5 (Kingdom of Morocco Passport, issued June 16, 1994), at 26. The entry and exit stamps appearing on the visa page (page 48 of the passport) indicate Applicant entered Morocco on January 11, 1995 and departed on January 21, 1995. *See also* Tr.I, at 81-84.

5. *See* Government Exhibit 1, *supra* note 3, at 1.

6. *See* Response to SOR, dated October 9, 2000, at 1.

7. *Ibid.*

8. *See* Government Exhibit 2 (Security Clearance Application (SF 86), dated March 5, 1999), at 8.

9. *See* Applicant Exhibit A (United States Passport, issued June 23, 1995).

10. *See* Government Exhibit 3 (Statement of Subject, dated August 12, 1999), at 2-3.

11. Tr.I, at 36.

12. *See* Government Exhibit 5, *supra* note 4, at 26. The entry and exit stamps appearing on the visa page (page 48 of the passport) indicate Applicant entered Morocco on June 5, 1996 and departed on December 7, 1996. *See also* Tr.I, at 32, and 81-85.

13. *See* Government Exhibit 1, *supra* note 3, at 3.

14. Tr.I, at 33-34.

15. *See* Government Exhibit 5, *supra* note 4, at 4. *See also* Response to SOR, *supra* note 6, at 1; and Tr.I, at 36.

16. Tr.I, at 36 and 63.

17. *See* Government Exhibit 3, *supra* note 10, at 2.

18. Tr.I, at 36-37.

19. *Id.*, at 34. *See also* Government Exhibit 1, supra note 3, at 5.

20. Tr.I, at 34.

21. *Id.*, at 35.

22. *Id.*, at 104.

23. *Id*., at 35.

24. *Ibid.*

25. *Ibid.*

26. *Id.*, at 34.

27. *See* Applicant Exhibit C (INS Notices of Action, dated December 19, 2000).

28. *See* Government Exhibit 1, *supra* note 3, at 4.

29. The record is somewhat confusing for Applicant completed one SF 86 on March 3, 1999 (Government Exhibit 1), a copy of which was signed by him, and apparently generated another SF 86 on March 5, 1999 (Government Exhibit 2), a copy of which was not signed by him.

30. Question 39. The question and the response appear in Government Exhibit 2, *supra* note 8, at 12, but are not included in Government Exhibit 1.

31. Question 38. The question and the response appear in Government Exhibit 2, *supra* note 8, at 12, but are not included in Government Exhibit 1.

32. *See* Government Exhibit 2, *supra* note 8, at 12.

33. *See* Government Exhibit 4 (Report of Credit, dated May 18, 1999), at 4.

34. *Ibid.*

35. *Id.*, at 5

36. *Id.*, at 4.

37. *Id.*, at 5.

38. *See* Response to SOR, *supra* note 6 (Attached Letter from Equifax, dated August 5, 1999).

39. *See* Applicant Exhibit B (Consumer Credit Report, dated November 10, 2000), at 2.

40. *See* Applicant Exhibit D (Letter from Creditor, dated August 18, 1999).

41. *See* Applicant Exhibit B, *supra* note 39, at 2.

42. *See* Response to SOR, *supra* note 6 (Attached Letter from Creditor, dated August 23, 1999).

43. *Id.*, Response to SOR, at 2.

44. Tr.I, at 79.

45. Tr.I, at 92.

46. *See* Executive Order 12968, *"Access to Classified Information;"* as implemented by Department of Defense Regulation 5200.2-R, *"Personnel Security Program,"* dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see* Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see* Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

47. *See United States v. Gallucci*, 54 F.Supp. 964, 966 (D. Mass. 1944).

48. *See* ISCR Case No. 97-0356, *supra* note 37, at 5-6.

49. *See* ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.