

DATE: February 6, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-02086

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn Antigone Trowbridge, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) on April 25, 2001, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference concerns (guideline C) related to dual citizenship and possession of a foreign passport, and on foreign influence concerns (guideline B) because of the foreign citizenship and/or foreign residency of close family members.

On June 2, 2001, Applicant, acting pro se, responded to the allegations set forth in the SOR and requested a decision based on the record, while also reserving his right to a hearing "in the future." Department Counsel prepared a File of Relevant Material which was forwarded to Applicant on or about July 25, 2001. Sometime thereafter, Applicant requested a hearing, and by letter dated October 4, 2001, he asked that his hearing be postponed until March 2002. The case was assigned to me on November 19, 2001, whereupon Applicant was contacted about his availability during the week of December 10, 2001. Pursuant to formal notice dated December 3, 2001, a hearing was scheduled for December 13, 2001, Applicant having waived the fifteen-day notice requirement.

At the hearing held on December 13, 2001, the Government submitted five documentary exhibits and the Applicant four exhibits, all of which were entered into the record without objection. Testimony was taken from Applicant. The Government also moved to amend the Statement of Reasons to reflect that Applicant's mother and an older brother, who had been resident citizens of Morocco as of the issuance of the SOR, were now Moroccan nationals living in the United States while Applicant's two sisters and a younger brother remained resident citizens of Morocco. Applicant having no objection thereto, subparagraph 2.a. was amended. The record was ordered held open for ten work days following the hearing to allow Applicant to submit any further documentation regarding his foreign passport. By facsimile on

December 17, 2001, Applicant provided a copy of cut up sections of his foreign passport, indicating its destruction. Applicant's correspondence was forwarded to me by Department Counsel on December 26, 2001. The Government having filed no objection thereto, the post hearing submission was marked and entered into evidence as Exhibit E. With receipt on December 26, 2001, of the transcript of the hearing, this case is ripe for a decision.

### **FINDINGS OF FACT**

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 34-year-old hardware design engineer who has been employed by a defense contractor since mid-July 1997. He seeks a Secret security clearance for his defense-related duties.

Applicant was born in 1967 to resident citizens of Morocco. Raised in Morocco through secondary school, Applicant came to the United States in 1988 on a student visa to study English with the eventual aim of pursuing further education in this country. A Moroccan citizen, he traveled on a passport issued by Morocco. Immediate family members left behind in Morocco included his mother, an older brother and two sisters. Once in the United States, Applicant moved in with an older brother who had come to this country six months before. (1) This older brother (brother #1), a citizen of Morocco, has permanent residency status in the United States. He works as a cook at a university.

For the first two years of his stay in this country, Applicant was unemployed while he took English as a foreign language classes. In 1990, Applicant got a job working in a local hotel as a room service waiter while he pursued his English language studies. Circa January 1991, he began employment as a cashier in concessions at the local airport. While residing in the United States, Applicant renewed his Moroccan passport in March 1992 for a five-year term. In April 1992, Applicant traveled to Morocco on this passport to see his family for about two weeks. Unemployed since January 1993, Applicant took another trip to Morocco to see his mother and siblings in August 1993.

Circa late August 1993 commenced his undergraduate studies on the urban campus of the state university. (2) A full-time student, Applicant financed his education through savings and financial aid from the university, including some scholarship money. In September 1995, Applicant transferred to the main campus and in June 1997, he was awarded his bachelor's degree in electrical engineering. Planning a trip back to Morocco to see his mother and siblings after he completed his college studies, Applicant applied for renewal of his foreign passport. In March 1997, his passport was renewed for a period of five years.

After he completed his college studies, Applicant in late May 1997 traveled to Morocco on his foreign passport where he stayed for a month. Recruited on the university campus, Applicant in July 1997 started his job with his current defense contractor employer. The company paid for Applicant to continue his education, and in August 1998, Applicant commenced studies for his master's degree. In May 2000, he was awarded his master's degree in electrical engineering.

While visiting brother #1 sometime in 1998, Applicant met a female Moroccan citizen at an automatic teller machine. At the time, she was in the United States visiting her brothers. Applicant and this woman dated for about a year, during which time she made a few trips back to the United States from Morocco. She was able to travel free because her father had been employed by the foreign state airline prior to his retirement. This Moroccan citizen accepted Applicant's proposal of marriage, and in May 1999, Applicant traveled on his Moroccan passport to Morocco for their wedding. Applicant returned to the United States in June 1999, accompanied by his new wife. She presently has permanent residency status in the United States.

In August 1999, Applicant became a United States naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. (3) Applicant took no action to formally renounce with Moroccan authorities his Moroccan citizenship or to surrender his Moroccan passport. Applicant acquired his United States passport within days of gaining his United States citizenship through naturalization. His United States passport is scheduled to expire in mid-August 2009.

Advised about a year into his defense-related employment that he might need a security clearance for his job, Applicant

on March 22, 2000, executed a security clearance application (SF 86) on which he listed his birth in Morocco and his dual citizenship with the United States and Morocco. Applicant reported the foreign citizenship but United States residency of his spouse and brother #1. He also disclosed that his mother, two sisters and two brothers were Moroccan citizens living in that country. Applicant listed his possession of valid United States and Moroccan passports, with the latter valid to March 2002. With regard to foreign travel, Applicant listed pleasure trips to Morocco in August 1993, July 1996, May 1997, and May 1999.

In April 2000, Applicant's contributions as a member of a performance integration team on a propulsion drive program were noted favorably by his employer.

On August 9, 2000, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his dual citizenship and matters of foreign influence. Applicant disclosed his spouse is a Moroccan citizen, but that she plans to become a United States citizen as soon as she is eligible, which would be in about three years. He indicated that his spouse's parents, who remain citizens of Morocco, were currently retired and living in the United States with one of their sons. Applicant described personal contact with his in-laws two to three times per month. Applicant acknowledged a close affiliation with his family members residing in Morocco, including his mother, with whom he maintained twice weekly telephone contact. He informed the agent he had applied for his mother to become a permanent resident of the United States so that she could live with him and his spouse. Applicant described monthly telephone contact with an older brother (brother #2) and two sisters, and twice monthly email contact with his younger brother (brother #3) in Morocco. Applicant denied any of his, or his spouse's, family members had any connection with the Moroccan government. Both of his brothers worked in a small family bookstore, which brother #2 inherited on the death of their father. Applicant admitted he had been sending money to family members in Morocco--approximately \$5,000.00 per year to his mother and younger brother, who lived with his mother. Applicant in 1999 sent one of his sister's \$6,000.00 to be used for a down payment on a home.<sup>(4)</sup> With regard to his dual citizenship and possession of a foreign passport scheduled to expire in mid-March 2002, Applicant explained he originally obtained the passport to come to the United States. Applicant denied any use of his foreign passport since his United States naturalization as well as any intent to use or renew it in the future. Applicant expressed a willingness to renounce his Moroccan citizenship and relinquish his Moroccan passport if necessary as a condition of access. He related his sole allegiance was to the United States, and he would do anything for this country.

Two months later, Applicant was reinterviewed by the same special agent to expand on his ties of affection and/or obligation to those family members living in Morocco. Applicant indicated that the sister to whom he had sent the \$6,000.00 was residing with her family with his mother, as his sister and her spouse were building a new home, which they planned to move into in about two months. This sister's husband had a small shop where he sold meats. Applicant denied any contact with this brother-in-law or his young nephew except on travels to Morocco. With respect to his other sister, Applicant related that she was separated from her husband, and that she and her two daughters also resided in the family home with his mother. Applicant denied any financial interest in the small shop run by his brothers #2 and #3, as he let his inherited share of the store go to brother #3. Applicant explained that on his mother's death, any of his inheritance would go to brother #3 or to his sisters "according to their need." Applicant indicated neither he nor his spouse anticipated inheriting or otherwise acquiring any financial interest or property in Morocco. As for brother #1, Applicant informed the DSS agent this sibling was a permanent resident of the United States currently employed as a cook. As for recent foreign travel, Applicant reported that he, his spouse, and his mother-in-law traveled to Canada in September 2000. He maintained he used his United States passport to enter Canada.<sup>(5)</sup> Applicant reiterated his willingness to renounce his foreign citizenship and relinquish his foreign passport as a condition of access.

Applicant filed an immigrant petition for permanent residence in the United States for brother #3, which was received by the Immigration and Naturalization Service (INS) in mid-October 2000. He subsequently filed an immigrant petition for permanent residence for brother #2, which was received by the INS in late March 2001.

On May 25, 2001, DOHA issued an SOR to Applicant alleging foreign preference concerns related to him holding dual citizenship with the United States and Morocco, and his possession of a valid Moroccan passport, which does not expire until March 2002, and foreign influence concerns because of the Moroccan citizenship held by his spouse, his brother #1, and his in-laws, and the Moroccan citizenship and residency of his other siblings. On receipt of the SOR, Applicant was apprised of an August 16, 2000, memorandum from the Assistant Secretary of Defense for Command, Control,

Communications, and Intelligence [ASD(C<sup>3</sup>I)] clarifying the foreign preference adjudicative guideline with respect to the use and/or possession of a foreign passport to the effect that clearance is to be denied or revoked unless an applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

In response to the SOR, Applicant on June 2, 2001, admitted his dual citizenship with Morocco and the United States, but maintained he had no preference for any country over the United States. With respect to renouncing his foreign citizenship, Applicant stated:

At this time renouncing my Moroccan citizenship will not do me any good except ruining my plan to bring the rest of my family to the United States. Renouncing my Moroccan citizenship may impact (may initiate retribution against my family in Morocco) my efforts to legally bring them to the United States.

Regarding his foreign passport, Applicant expressed a willingness to submit it to any US government agency, but not to the Moroccan government, as such action could lead to retribution against his family members still in that country. With respect to the allegations of potential foreign influence because of the foreign citizenship and/or residency of family members, Applicant indicated his mother in mid-March 2001 was granted permanent residence in the United States and that she was currently living with him and his spouse. He had filed an immigrant petitions for brothers #2 and #3 to become permanent residents of the United States, on which he was awaiting INS action. Applicant expressed his intent to file similar petitions for his two sisters as soon as the petitions for his brothers were approved. Applicant indicated his spouse, in-laws and brother #1 were willing and planning to become United States citizens, with his spouse and her parents eligible in 2003. Applicant denied any family members were agents of a foreign power or in a position to be exploited, or that he had any financial interests in Morocco.

As of December 2001, Applicant's mother was still living with him. She spends about ten percent of her time in Morocco, going back to visit Applicant's sisters and his younger brother (brother #3), who had not yet heard from the INS as to his request to emigrate. Applicant's two sisters and younger brother live in the family home in Morocco. Applicant has a proportional interest in this property amounting to less than a quarter share. Estimating the property to be worth \$30,000.00, Applicant would receive about \$2,000.00 if it was sold, which is what he earns in one week in his defense-related employment. Brother #2, who was living with brother #1 in the United States, was awaiting the INS decision on his application to work in the United States. Applicant had taken no action to formally renounce his foreign citizenship or passport. Maintaining he meant his oath of allegiance to the United States, he expressed a willingness to destroy his Moroccan passport, but he would not return it to the Moroccan government as he feared retribution against those family members remaining in Morocco:

I cannot put myself or my family into harm because submitting this passport won't do any good, except, like, walking (sic) up the Moroccan government, and, you know, it would take it as an insult, and they would try to retribute (sic) against me or against my family in Morocco by doing such act. So, the passport is expiring on [March 2002], and I'm not willing to renew it. It's here. It will be like, I'm even willing to destroy it right now in front of you. Set it on fire. (Transcript p. 46).

When asked to describe the retribution feared, Applicant cited the non-democratic form of government in Morocco, and surmised the Moroccan government would revoke the Moroccan passports of family members there so they could not leave that country. When it was pointed out to Applicant that he could travel to Morocco on his United States passport, Applicant responded he could be denied a visa. With regard to renouncing his foreign citizenship, Applicant indicated he would not be willing to go to the Moroccan Consulate or Embassy unless all his family members were in the United States.

Sometime after his hearing on December 13, 2001 and December 17, 2001, Applicant cut up his foreign passport.

Applicant continues to have regular contact with his sisters in Morocco, telephoning them twice per month. He exercises care with respect to what they talk about.

## POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Guideline C**

#### **Foreign Preference**

E2.A3.1.1. The Concern: 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A3.1.2.1. The exercise of dual citizenship

E2.A3.1.2.2. Possession and/or use of a foreign passport

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based on parents' citizenship or birth in a foreign country

### **Guideline B**

#### **Foreign Influence**

E2.A2.1.1. The Concern: 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. 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

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual which indicate a preference for a foreign country over the United States. (6) A citizen of Morocco since birth, Applicant was raised and educated in that country through secondary school. In 1988, he came to the United States to study English with the goal of pursuing college studies here, entering the United States on a Moroccan passport. Close to his family, Applicant applied for, and was issued on renewal, his foreign passport in 1992 so that he could take a trip that April to visit his mother and siblings in Morocco. Applicant used his Moroccan passport again in August 1993 on a visit home just prior to commencing his undergraduate studies in the United States. With another trip to Morocco planned after college, Applicant renewed his foreign passport in March 1997 for another five years. In addition to his travel to Morocco in late May 1997, Applicant presented his Moroccan passport when he went to Morocco in May 1999 for his wedding to a Moroccan citizen. In July 1997, Applicant commenced employment with a defense contractor. In August 1999, Applicant took an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States, if required. Within days of his naturalization, Applicant applied for, and was issued a United States passport.

Consistent with his intent to continue to live as a United States citizen, Applicant sponsored his spouse and mother for permanent residence in the United States. He filed immigrant applications with the INS for his two brothers in Morocco, and one of these brothers is now living in the United States. Yet, Applicant continued to maintain a valid Moroccan passport, even after being apprised of the ASD(C<sup>3</sup>I) policy clarification of August 16, 2000, that possession and/or use of a foreign 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. While there is no evidence he used the Moroccan passport after he became a United States citizen, his possession of that passport after becoming a United States citizen constitutes

the exercise of his foreign citizenship. Under the adjudicative guidelines pertinent to foreign preference, disqualifying conditions (DC) E2.A3.1.2.1. the exercise of dual citizenship and E2.A3.1.2.2. possession and/or use of a foreign passport apply in this case.

Foreign preference concerns may be mitigated if the dual citizenship was based solely on birth or the foreign citizenship of one's parents (MC E2.A3.1.3.1.), the indicators of possible foreign preference occurred before obtaining United States citizenship (MC E2.A3.1.3.2.), the activity is sanctioned by the United States (MC E2.A3.1.3.3.), or the individual has expressed a willingness to renounce dual citizenship (MC E2.A3.1.3.4.). Whereas Applicant's foreign citizenship is derived from his birth in Morocco, MC E2.A3.1.3.1. applies in his favor.<sup>(7)</sup> However the presence or absence of a given factor, for or against clearance, is not necessarily dispositive. The foreign preference concerns engendered by his possession of a foreign passport find inadequate redress in MC E2.A3.1.3.1. The risk of unverifiable travel can only be completely eliminated by making it impossible through surrender of the foreign passport, or giving the Government some oversight authority over the use of a foreign passport.<sup>(8)</sup>

When he was interviewed by the DSS special agent in August 2000 and October 2000, Applicant expressed his willingness to renounce his Moroccan citizenship and relinquish his Moroccan passport if necessary to obtain a security clearance. Yet, as of June 2001, Applicant was no longer willing to renounce his foreign citizenship ["Renouncing my Moroccan citizenship may impact (may initiate retribution against my family in Morocco) my efforts to legally bring them to the United States."]. After being apprised of the ASD(C<sup>3</sup>I) policy guidance, Applicant promised he would not renew his foreign passport, and would willingly surrender it, but only to the United States Government. At the hearing, Applicant offered to destroy the passport, even to set it on fire, rather than to surrender it to the Moroccan government. After the hearing, Applicant cut up his foreign passport to corroborate his intent not to use the Moroccan passport in the future. The DOHA Appeal Board in November 2000 concluded in another case involving possession of a foreign passport that given the legal nature of a passport, surrender would be achieved by returning the passport to the issuing authority or other entity authorized by law, not by giving the passport to a third party.<sup>(9)</sup> In a more recent decision, citing the earlier case, the DOHA Appeal Board made it clear that the ASD(C<sup>3</sup>I) memorandum is not satisfied by an offer to destroy a foreign passport or give it to the United States government.<sup>(10)</sup>

Whereas Applicant's foreign passport has been defaced, it is highly unlikely it would be accepted as a valid travel document. However, since Applicant has taken no action to return his passport to the Moroccan government, he remains eligible to apply for a replacement. When confronted at the hearing by the fact that he could travel to Morocco on his United States passport, Applicant expressed concern that the Moroccan government might deny him a visa if he were to renounce his foreign citizenship or surrender his passport. While there is no evidence Applicant is planning a trip to Morocco, future travel to his native land cannot be ruled out since his younger brother and two sisters reside there. Given Applicant maintains dual citizenship and is on record in Morocco as possessing a passport issued by that nation, there is a real risk he would apply for replacement or renewal if pressed by Moroccan authorities in connection with foreign travel there or otherwise. Applicant's dual citizenship leaves him subject to the laws of another jurisdiction, whose interests may not always be consistent with the United States. While dual citizenship is recognized by the United States, the Government does not encourage its citizens to remain dual nationals because of the complications that may ensue from the obligations owed to the country of second nationality. Applicant having failed to overcome the foreign preference concerns in this case--concerns magnified by the presence of close family members in Morocco--subparagraphs 1.a. and 1.b. are resolved against him.

In this case, there is a factual and logical connection between Applicant's guideline C conduct (possession of a foreign passport and continued maintenance of dual citizenship) and his ties to family members in Morocco which raise concerns under guideline B. Applicant's two sisters and brother #3 remain resident citizens of Morocco as of the hearing. While Applicant filed an immigrant petition for his younger brother (brother #3) in October 2000, neither Applicant nor his brother had heard from the INS on this application. While other close family members (spouse, mother, in-laws and brothers #1 and #2) are residents of the United States, they are all Moroccan citizens. With respect to his mother, she travels to Morocco on occasion where she stays with her children in the family home. Applicant has a strong sense of affection and obligation toward these family members. When Applicant inherited his share of the family store, he allowed it to pass to his younger brother. He provided monetary assistance of \$6,000.00 to one sister, and when his mother was still living full-time in Morocco, he sent her \$5,000.00 per year and telephoned her once a week. In the last

two years, Applicant has contacted his sisters twice per month. Admitted concern for his family members in Morocco has been the reason for his decision not to renounce his foreign citizenship or surrender his foreign passport to Moroccan authority. Under guideline B, 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. Thus, disqualifying condition E2.A2.1.2.1. (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) applies in evaluating Applicant's security worthiness. DC E2.A2.1.2.1., sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for foreign influence or duress exists, must be considered as well.

Under the Directive, the security concerns engendered by the foreign citizenship of such close family members may be mitigated where it can be determined 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 (MC E2.A2.1.3.1.).<sup>(11)</sup> There is no evidence Applicant's mother or his siblings have ever been employed by the Moroccan government or were otherwise agents of that foreign government. Applicant's father-in-law retired from his position with a Moroccan airline. Nor is there any evidence Applicant's mother or siblings, or his in-laws have ever been subjected to undue pressure or coercion. However, the burden is on Applicant to present evidence in rebuttal, extenuation or mitigation sufficient to overcome the risk of foreign influence posed by the foreign citizenship and/or residency of these close family members. The United States residency of his mother, spouse, brothers #1 and #2, and his in-laws reduces somewhat the risk of undue influence, but as Moroccan citizens, they are still subject to that country's laws. Furthermore, Applicant pays for his mother's trips to Morocco to visit brother #3 and his two sisters. Whereas Applicant so fears retribution by Moroccan authorities that he remains unwilling to surrender his foreign passport or to enter a Moroccan consulate to commence formal renunciation of his citizenship, he is regarded as potentially vulnerable to foreign coercion, influence or pressure.<sup>(12)</sup> Adverse findings are warranted with respect to subparagraphs 2.a. (as amended), 2.b., 2.c., and 2.d., his contributions to his defense contractor employer notwithstanding.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**



1. When interviewed by a Defense Security Service (DSS) special agent on August 9, 2000, Applicant indicated he came to the United States by himself and that he had no relatives in the United States to sponsor him. (See Ex. 2). Applicant testified at the hearing that he moved in with an older brother who had arrived six months before. That brother, who works as a cook at a university, was in the United States on a student visa himself at the time. He is now a permanent resident of the United States. (Transcript pp. 83, 90).
2. Applicant reported on his SF 86 that he took a pleasure trip to Morocco for twenty days in August 1993. His Moroccan passport contains an entry stamp confirming his admission into the United States in August 1993. While he reported on his SF 86 that he commenced his undergraduate studies at a university in the United States in July 1993, he told a DSS agent in August 2000 that he pursued his electrical engineering degree from August 1993. Given his foreign travel to Morocco in August 1993, in all likelihood he commenced his studies in August 1993.
3. Applicant testified he came to the United States in 1988 with the intention of eventually gaining United States citizenship. (Transcript p. 84). It is not clear when he applied for United States citizenship.
4. In expanding on the information provided during the August 2000 interview, Applicant in October 2000 indicated his sister used the \$6,000.00 "as a down payment to be able to build a house." (Ex. 3). At his hearing, he testified his sister put the \$6,000.00 down on the family home owned by his mother and all of the children, including himself, following the death of his father. (Transcript p. 54). His sister, who currently lives in the family home in Morocco with her husband and minor child, may well have elected not to build a new house after her mother became a permanent resident of the United States, but the issue was not explored at the hearing.
5. Applicant's United States passport (Ex. 5) bears no entry stamp. It is conceivable Applicant presented his passport for identification purposes as they crossed the border.
6. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen.
7. The DOHA Appeal Board, in a rather expansive reading of the adjudicative guideline, has held that MC E2.A3.1.3.1. applies in cases where dual citizenship is based on birth.
8. In his memorandum of August 16, 2000, the ASD(C<sup>3</sup>I) stated, 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.
9. See DOHA Appeal Board decision in ISCR 99-0480 dated November 28, 2000.
10. See DOHA Appeal Board decision in ISCR 01-01295 dated December 13, 2001.
11. Applicant has a share in the family home in Morocco. However, the amount of the financial interest is very minimal when compared to his United States interests, including his salary from his defense job.
12. Applicant testified he was not familiar with the process of renunciation of his Moroccan citizenship. When asked whether he would make a statement to the Moroccan consulate or embassy, Applicant responded he would not be willing

to do that at this time. If all his family members were in the United States, he would probably send a letter, "because once you are in Consulate, you're in Morocco. Even if it is in America." (Transcript pp. 74-75).