

DATE: January 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31811

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has been a dual citizen of Tunisia and the United States since 2000. He has a current Tunisian passport and intends to retain the passport and his citizenship due to family matters. He has traveled to Tunisia on his Tunisian passport since obtaining his American passport and has extensive family ties, as well as property interests, there. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On June 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 24, 2003, and requested a hearing. The case was received by the undersigned on August 8, 2003, and a Notice of Hearing was issued on September 8, 2003.

A hearing was held on September 23, 2003, at which the Government presented four documentary exhibits, and called one witness. Testimony was taken from the Applicant. The transcript was received on October 3, 2003.

FINDINGS OF FACT

The Applicant is 40, single and has a Doctorate in Electrical Engineering. He is employed by a defense contractor as an Engineer Scientist, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Tunisia in 1963. He moved to the United States in 1992 to continue his education and has lived continually in the United States since that time. (Government Exhibit 1 at questions 4 and 5.) The Applicant became a naturalized American citizen on November 17, 2000. The Applicant obtained a United States passport on November 27, 2000. (Government Exhibit 1 at question 3.) He is a dual citizen of the United States and Tunisia because of his birth in Tunisia. The Applicant also has a valid Tunisian passport, which he last renewed in 2003. (Transcript at 20.)

The Applicant has traveled to Tunisia since becoming an American citizen using his Tunisian passport. The last time he made such a trip was from June 29 to July 21, 2003. (Transcript at 30.) The Applicant stated that it would be difficult for him to travel to Tunisia only on his American passport. The Applicant's statement was supported by the exhibits. Government Exhibit 3 is a U.S. Department of State Consular Information Sheet for Tunisia dated September 23, 2003. It states, "Tunisia expects American citizens of Tunisian origin to enter Tunisia on Tunisian passports. If a Tunisian-American succeeds in entering on an American passport, there is a high probability that a Tunisian passport will be required to exit the country."

The Applicant was sent a copy of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence dated August 16, 2000, with the subject, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." ("Money Memorandum.") (Government Exhibit 4.) The Applicant's mother and family continue to live in Tunisia. The Applicant's mother is 81 years old and the Applicant is unwilling to give up the ability to travel freely to Tunisia to visit his family. He testified, "The thing is like to me, it is - not having a Tunisian Passport means making it really, really difficult to visit my family and that's the only reason I keep my Passport. At this time, I cannot give it up because that makes it much, much more difficult for me to visit my family. In my opinion, the Applicant fully understood the possible impact of this determination. (Transcript at 33-36.)

The Applicant believes that he cannot revoke his Tunisian citizenship, even if he wishes to do so. Because of his family situation, he does not intend to revoke his citizenship. (Transcript at 20-21.)

The Applicant inherited part of his father's farm when his father died. The entire farm is 40 to 50 acres and the Applicant's interest is about 5 acres. In the Applicant's estimation, the property is worth about \$5,000. (Transcript at 21-23.)

When he was younger, the Applicant worked for the Tunisian Ministry of Equipment. His job was concerned with the maintenance of the nation's ferry system. (Transcript at 24-25.)

Guideline B - (Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

The Applicant's mother, a housewife, and his nine brothers and sisters still live in Tunisia. One brother is a retired police officer and another brother is a school teacher. None of his other siblings works for the Tunisian government, nor are they in a position to influence the Applicant. (Government Exhibit 2 at 4-6.)

The Applicant sends his mother money every year. He does this out of a sense of responsibility as a son. The amount he sends his mother amounts to \$5,000 to \$10,000 a year. (Transcript at 23.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Conditions that could raise a security concern:

(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;

Guideline C (Foreign preference)

Conditions that could raise a security concern:

- (1) The exercise of dual citizenship;
- (2) Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

(None of the stated conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved may be a dual citizen or have foreign connections that may be evidence of untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of showing that the Applicant is a dual citizen of Tunisia and the United States, that he retained and used a Tunisian passport after becoming an American citizen in preference to his US passport, and that he has extensive foreign connections. The Applicant, on the other hand, has not mitigated any of the allegations.

The Applicant has a family situation that, in his opinion, keeps him from either revoking his Tunisian citizenship or returning his Tunisian passport. His decision to retain the passport and citizenship is not made lightly. However, the Money Memorandum requirements do not allow a distinction to be made because of potential family emergencies. In addition, he has traveled to Tunisia on his Tunisian passport since becoming an American citizen. The last time he traveled on the Tunisian passport was after receiving the Statement of Reasons in June 2003. Guideline C is found against the Applicant.

Turning to Guideline B, the Applicant has not mitigated this allegation. He has close and continuing relationships with his family members in Tunisia. While it appears that they are not agents of the Tunisian government, given the overall stance of the Tunisian government towards Tunisian-Americans, it is still a concern. He owns a small amount of property in Tunisia, and sends his mother money every year. The amounts in question are not large but, under the circumstances in this case, are still of security significance. Guideline B is found against the Applicant.

The Applicant has made what he believes to be the best decision for him and his family by retaining his Tunisian citizenship and passport. That may well be true. However, the current security rules do not allow him to have a security clearance. On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

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

of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.a.: 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 the Applicant.

Wilford H. Ross

Administrative Judge