

DATE: February 18, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09935

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's parents, and five of his siblings, are citizens of and reside in Algeria. Two other siblings, who are also Algerian citizens, reside in France. He avers, credibly, that his relatives are "private citizens," without links to any foreign power, and are not in a position to be exploited or subject to coercion. Although the Applicant avers he is not a dual national, he still retains a valid Algerian passport, which he renewed in June of 2003. Despite being appraised of the *Money Memo* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudication Guidelines," dated September 1, 2000), the Applicant has failed to surrender that foreign passport. Mitigation is not shown as to his Foreign Preference; and as such, his clearance is denied.

STATEMENT OF THE CASE

On June 15, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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. Accompanying the SOR was a copy of the *Money Memo*.

Applicant filed an Answer to the SOR on or about July 11, 2004.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 28, 2004. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on January 4, 2005, and Applicant's Response was received on or about January 23, 2005. The case was received by the undersigned for resolution on February 8, 2005. The issues raised here are whether the Applicant's Foreign Preference, and alleged Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations except for the exercise of dual citizenship, subparagraph

1.a..]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 37 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

1.a. and 1.b. The Applicant was born in Algeria to Berber parents in 1967 (Response at page 1, and Item 4 at page 1). He attended university in France, and emigrated to the United States in 1995 (Item 4 at page 2). He became a U.S. citizen in 2001, does not consider himself to be a dual national, but still maintains an Algerian passport (Item 4 at page 1, Item 3 at page 2, and Item 6 at page 4). He maintains this foreign passport "is to make . . . [himself] available for . . . [his] elderly and sick parents without having to spend hours and weeks back and forth with the inconsiderate Algerian [visa] processes" (Item 3 at page 2). The Applicant was appraised of the *Money Memo* on or about June 15, 2004 (Item 2 at page 4). Despite this appraisal, he still retains this valid Algerian passport (Response at page 1).

Guideline B - Foreign Influence

2.a.~2.c. The Applicant's parents, and five of his siblings, are citizens of and reside in Algeria (Item 3 at page 2, and Item 4 at pages 4, 10 and 11). Two other siblings, who are also Algerian citizens, reside in France (Item 4 at page 12). His parents are elderly and sickly, and his "siblings are all professionals ranging from Engineers and Architects to Nurses" (Item 3 at page 2). He avers, credibly, that his relatives are "private citizens," without links to any foreign power, are not in a position to be exploited or subject to coercion (Item 3 at pages 2~3, and Response at page 2).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case.

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guideline C (Foreign Preference), and Guideline B (Foreign Influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct or situation, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a Foreign Preference, or who is subject to a Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant is a former citizen of Algeria, and still maintains an Algerian passport. The second disqualifying condition under Personal Preference is therefore applicable as there is "[p]ossession . . . of a foreign passport." Furthermore, despite being appraised of the *Money Memo*, he has yet to surrender his foreign passport. The *Money Memo* "requires that any clearance be denied or revoked unless the applicant surrenders his foreign passport" Guideline C is therefore found against the Applicant.

As to his parents and siblings, who are citizens of Algeria and reside in either Algeria or France, the first disqualifying condition is applicable, as he has an "immediate family member . . . [who] is a citizen of, or resident or present in, a foreign country." Applicant has demonstrated, however, that his immediate family members "are not agents of a foreign power," and not "in a position to be exploited by a foreign power." Thus the countervailing first mitigating condition under Foreign Influence is applicable here; and as such, Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Foreign Preference. The Applicant has thus not met the mitigating conditions of Guideline C, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola

Administrative Judge