

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant has failed to fulfill the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (Money Memorandum) by refusing to return his Moroccan passport to the Moroccan Government. Additionally, he has stated that he has no intention of renouncing his Moroccan citizenship. None of Applicant's family members or friends, are involved with any government agency of orocco. They are not in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Clearance is denied.

CASENO: 04-00246.h1

DATE: 04/05/2005

DATE: April 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00246

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

## **FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has failed to fulfill the requirements of the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence, dated August 16, 2000, entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (Money Memorandum) by refusing to return his Moroccan passport to the Moroccan Government. Additionally, he has stated that he has no intention of renouncing his Moroccan citizenship. None of Applicant's family members or friends, are involved with any government agency of Morocco. They are not in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Clearance is denied.

### **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), dated July 21, 2004, 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 (Guideline C) and Foreign Influence (Guideline B) concerns.

In a signed and sworn statement, dated August 4, 2004, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On December 15, 2004, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had until February 4, 2005, to file a response to the FORM, but no response was received. The case was assigned to me on March 17, 2005.

Department Counsel offered 11 documentary exhibits (Exhibits 1-11), which were admitted without objection. Applicant offered no documentary evidence.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. The SOR contains four allegations, 1.a. through 1.d., under Guideline C, and three allegations, 2.a. through 2.c. under Guideline B. Applicant admitted all of the SOR allegations. Those admissions are incorporated herein as Findings of Fact.

In the FORM, Department Counsel moved to amend the SOR, by adding an additional allegation under Guideline B. Allegation 2.d. would state, "Your two sisters are dual citizens of the United States and Morocco who reside in the United States." Applicant has not objected to this additional allegation, which is based on information furnished by Applicant in Exhibit 4. I rule that the SOR now contains allegation 2.d., as described above.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 24 years old, employee of a United States defense contractor who seeks access to classified information.

#### **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 indicate a preference for another country over the United States.

Applicant was born in Morocco in 1979 to an American mother and a Moroccan father. His mother now resides in the United States and his father is deceased (Exhibit 4). He therefore, was both a United States and Moroccan citizen by

birth. Since at least 1995, Applicant has possessed and maintained a valid Moroccan passport, which he first received on January 30, 1995, and renewed on January 20, 2000. It was scheduled to expire on January 29, 2005. He also has a valid United States passport, which he received on December 4, 1997 (Exhibits 3, 5, and 9).

In Exhibit 5, a sworn statement, made to the Defense Security Service, and signed by the Applicant on June 23, 2003, he stated:

I have retained dual citizenship status with Morocco to facilitate the transfer of family funds from Morocco to the U. S. I am not willing to renounce my Moroccan citizenship at the present time because it facilitates my interests with the Moroccan government regarding our family property in Morocco. I am not willing to relinquish my passport for the same reasons . . . I regard Morocco as a second "home" country.

There has been no evidence introduced into the record which would show that Applicant had a change of position regarding either his Moroccan citizenship or passport. While his Moroccan passport was scheduled to expire on January 29, 2005, his statement strongly suggests that he will renew this passport so that he may continue to use it in his dealings with Morocco.

## **Paragraph 2 (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.

Applicant has uncles, aunts, cousins and friends who are citizens and residents of Morocco. His two sisters are dual citizens of Morocco and the United States, and they reside in the United States. Applicant maintains differing levels of contact with his relatives and friends in Morocco. He contends that none of these family or friends, with whom he maintains contact, is employed by or connected with the Moroccan government (Exhibit 5).

Applicant traveled to Morocco on three occasions between March 2000 and June 2001. He maintains a checking and savings account in Morocco. The account balance is approximately \$600. He has no other Moroccan assets (Exhibit 5).

## **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.

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 those who testified, I conclude the following with respect to Guidelines C and B:

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's renewal of his Moroccan passport and his refusal to relinquish this passport raises serious foreign preference (Guideline C) concerns. They are a clear violation of the Money memorandum, and therefore Applicant is absolutely barred from retaining a security clearance. Applicant's stated unwillingness to renounce his Moroccan citizenship must also be considered adversely to Applicant.

Disqualifying Condition (DC) (E2.A3.1.2.1.) applies because Applicant's renewal and use of his Moroccan passport in 1995 and 2000 is a continuing example of Applicant's exercising dual citizenship. DC (E2.A3.1.2.2.) also applies because of Applicant's failure to return his passport to the proper authorities. No mitigating condition (MC) applies in this case under Guideline C.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. DC (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, must be considered in assessing Applicant's current suitability for access to classified information. Applicant's family and friends, who still reside in Morocco and are Moroccan citizens, and with whom he has continuing contact, may be initially presumed to be a risk of

being in a position to be exploited by a foreign power.

However, based on the nature of the overall record and the totality of the evidence, I have determined that his family and friends in Morocco do not constitute an unacceptable security risk, and MC (E2.A2.1.3.1.), a determination that the immediate family member(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, applies.

### **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 APPLICANT

Subparagraph 1. a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For 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.

**Martin H. Mogul**

**Administrative Judge**