

KEYWORD: Foreign Preference

DIGEST: Applicant is 48 years old, married, and works for a defense contractor as a mechanical engineer. He was born in Algeria, and immigrated to the U.S. He became a U.S. citizen in September 1997, and obtained a U.S. passport on December 1, 1997. Applicant also claimed dual citizenship with Algeria, and had an Algerian passport issued November 11, 1997, renewed October 25, 2002, and surrendered on April 15, 2005, before its expiration date. Applicant traveled three times from 1997 to 2003 to Algeria using his Algerian passport, but used his U.S. passport for all other foreign travel. Applicant mitigated the foreign preference security concern. Clearance is granted.

CASENO: 04-03486.h1

DATE: 10/31/2005

DATE: October 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03486

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 48 years old, married, and works for a defense contractor as a mechanical engineer. He was born in Algeria, and immigrated to the U.S. He became a U.S. citizen in September 1997, and obtained a U.S. passport on December 1, 1997. Applicant also claimed dual citizenship with Algeria, and had an Algerian passport issued November 11, 1997, renewed October 25, 2002, and surrendered on April 15, 2005, before its expiration date. Applicant traveled three times from 1997 to 2003 to Algeria using his Algerian passport, but used his U.S. passport for all other foreign travel. Applicant mitigated the foreign preference security concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 18, 2005, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on May 3, 2005. He requested his case be decided on the written record in lieu of a hearing.

On July 14, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM within the scheduled due date of August 18, 2005. The case was assigned to me on September 14, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the FORM, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 48 years old, married with two children, and works for a defense contractor as a mechanical engineer. He was born in Algeria, immigrated to the U.S., and became a U.S. citizen in September 1997. He obtained a U.S. passport on December 1, 1997, that expires on November 30, 2007. (Exhibits 4 and 5)

Applicant continued to possess an Algerian passport after he became a U.S. citizen in 1997. His Algerian passport was issued November 11, 1997, and renewed on October 25, 2002. It was to expire on October 24, 2007. Applicant stated he was willing to relinquish his Algerian passport and renounce his Algerian citizenship. However, Applicant claims the Algerian Embassy officials told him he could not renounce his Algerian citizenship under Algerian law. Applicant surrendered his Algerian passport on April 15, 2005, to the Algerian Embassy in Washington, D.C. (Exhibits 3, 4, and 5, FORM Response)

Applicant traveled to Algeria using the Algerian passport for three weeks in December 2003, one month during June and July 2000, and for two weeks in December 1997 to January 1998. He visited his parents and siblings during those visits. He visited his terminally ill brother during the 1997 visit. Applicant claimed it was easier to use the Algerian passport to enter Algeria during the civil unrest occurring in Algeria at that time than use the U.S. passport, and he did not need a visa from Algeria. On other overseas trips to other countries Applicant used his U.S. passport. Applicant does not need to use an Algerian passport to enter Algeria anymore because of the changed political climate, as he was told by the Algerian Embassy. (Exhibits 3, 4, and 5, FORM Response)

Applicant served in the Algerian Army as a second lieutenant from May 15 1983 to June 5, 1985. It was mandatory for all Algerian males to serve in the armed forces. Applicant does not vote in Algerian elections. He does not own property in Algeria. His dual citizenship comes from his parents' birth in Algeria and their continued Algerian citizenship, in addition to his birth there. (Exhibits 3, 4, and 5)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 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 condition 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 other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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: *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.A3.1.1.

The Memorandum of August 16, 2000, entitled "Guidance of DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudicative Guidelines", by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), commonly known as the "Money Memo" interprets the guideline and is relevant in this case. This memorandum guidance states that

possession and/or use of a foreign passport may be a disqualifying condition. . . 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 raised 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 this 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.

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. The Disqualifying Conditions (DC) applicable are DC 1 (The exercise of dual citizenship E2.A3.1.2.1), DC 2 (Possession and/or use of a foreign passport E2.A3.1.2.2), and DC 3 (Military service or a willingness to bear arms for a foreign country E2.A3.1.2.3). Applicant used his Algerian passport for his three incidents of travel to visit his family between 1997 and 2003. Those acts are the exercise of the dual citizenship he claimed on his security clearance application. He used the Algerian passport because it was easier for him to enter and exit Algeria than using his U.S. passport. This use was for his own convenience, and showed a preference for Algeria even after Applicant became a U.S. citizen. The Algerian passport was issued less than a month before Applicant obtained his U.S. passport in 1997 and two months after he became a U.S. citizen. To become a U.S. citizen a person must renounce allegiance to any foreign government or power. Applicant took that oath, and then sought an Algerian passport. This simultaneous application and issuance shows a preference for Algeria by Applicant.

Applicant also served as an officer in the Algerian military from May 1983 to June 1985. That service was mandatory for all Algerian men.

The Mitigating Conditions (MC) applicable are MC 1 (Dual citizenship is based solely upon parents' citizenship or birth in a foreign country E2.A3.1.3.1), MC 2 (Indicators of possible foreign preference, e.g., foreign military service, occurred before obtaining U.S. citizenship E2.A3.1.3.2), and MC 4 (Individual has expressed a willingness to renounce dual citizenship E2.A3.1.3.4). Applicant's dual citizenship came from his birth in Algeria and his parent's citizenship. His service in the Algerian Army occurred before Applicant immigrated to the U.S. and 12 years before he became a U.S. citizen. Applicant's statement to the government investigator and Applicant and surrendered his Algerian passport to the Algerian government, the issuing authority, in April 2005. This action accords with the surrender requirement of the "Money Memo". Therefore, I conclude this guideline for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

In light of all of 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. Clearance is granted.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).