

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, who is a U.S. naturalized citizen and was a citizen of Algeria solely by virtue of his birth and his parents' birth in the country, and who renewed obtained an Algerian passport for use in traveling to and from Algeria to see his father, fails to absolve himself of preference concerns, despite his being a U.S. citizen since 2003, and his having no identified financial interests in Algeria. Because Applicant's father and extended family members who reside in Algeria are shown to be still potentially vulnerable to pressure or coercion, foreign influence concerns pose unmitigated security risks as well. Clearance is denied.

CASENO: 04-04217.h1

DATE: 12/30/2005

DATE: December 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04217

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who is a U.S. naturalized citizen and was a citizen of Algeria solely by virtue of his birth and his parents' birth in the country, and who renewed obtained an Algerian passport for use in traveling to and from Algeria to see his father, fails to absolve himself of preference concerns, despite his being a U.S. citizen since 2003, and his having no identified financial interests in Algeria. Because Applicant's father and extended family members who reside in Algeria are shown to be still potentially vulnerable to pressure or coercion, foreign influence concerns pose unmitigated security risks as well. Clearance is denied.

STATEMENT OF CASE

On March 31, 2005, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR (undated), and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant material (FORM) on October 19, 2005, and did not respond to the FORM. The case was assigned to me November 29, 2005.

SUMMARY OF PLEADINGS

Under Guideline C, Applicant is alleged to (1) exercise dual citizenship with Algeria and the U.S., (2) have renewed his Algerian passport in June 2003 (expiration not until June 2008), even though he had become a naturalized U.S. citizen in March 2003 and was issued a valid U.S. passport, (3) have used his Algerian passport instead of his U.S. passport to enter Algeria in September 2003, (4) intend to use his Algerian passport to travel to Algeria, and (5) have voted in the Algerian presidential election in approximately 1997 at the Algerian Embassy in the U.S.

Under Guideline B, Applicant is alleged to have (a) a father who is a citizen and resident of Algeria, (b) extended family members, to include aunts, uncles and cousins, who are citizens and residents of Algeria, and (c) traveled to Algeria in 2001, 2002 and 2003.

For his answer to the SOR, Applicant denied a preference for any foreign country over the U.S., exercise of dual citizenship, and any intention to continue using his Algerian passport for travel to Algeria. He admitted renewing his Algerian passport, but claims he is willing to surrender his Algerian passport as required by the DoD Directive. Applicant also admitted using his Algerian passport to enter Algeria in September 2003 as the easiest and quickest way to travel to Algeria. And he admitted to voting in an Algerian election in 1997 (before becoming a U.S. citizen). However, he denied voting in any Algerian election after becoming a naturalized U.S. citizen.

FINDINGS OF FACT

Applicant is a 40-year-old engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Algeria to Algerian parents. He immigrated to the U.S. with his mother and sister in June 1989 to further his advanced studies. After taking classes in English he matriculated to a U.S. university to pursue a masters degree in mathematics, and later a PhD in meteorology from another U.S. institution.

In 1997, while a resident of the U.S. but not a U.S. citizen, Applicant traveled to the Algerian Embassy in the U.S. to vote in a presidential election being held in Algeria. He subsequently applied for U.S. citizenship. When he was naturalized a U.S. citizen in March 2003, he received a U.S. passport.

In November 1998 (before he became a U.S. citizen), Applicant applied for and received an Algerian passport. This passport was scheduled to expire in November 2003. He renewed his Algerian passport in June 2003 (after he received his U.S. passport) to facilitate less travel disruptions when he entered and exited Algeria, which he did in 2001, 2002 and 2003 to visit his father.

To date, Applicant has declined to turn in his Algerian passport to the Algerian Embassy or local consulate. Recognizing U.S. concerns about his possessing and using an Algerian passport to travel to Algeria, Applicant has resisted turning in his Algerian passport out of deference to his father, who is currently very sick and in need of Applicant's assistance from time to time. Should either something happen to his father, or his father be persuaded to move to the U.S., Applicant would consider giving up his Algerian passport, but not until then. For the foreseeable future, he intends to continue using his Algerian passport in his travels to and from Algeria, citing expediency to his travel needs.

Besides his father, Applicant has considerable members of his extended family who reside in Algeria: aunts, uncles and cousins. Both his mother-in-law and father-in-law are citizens of Algeria who reside there. His brother and sister reside in the U.S. and have green cards. Each has applied for U.S. citizenship. To help with the newborns of Applicant and his sister, Applicant's mother came to the U.S. in February 2003. Applicant has since sponsored his mother to obtain her green card and remain in the U.S. And he intends to do the same for his father.

Applicant does not own any foreign property or have any foreign bank accounts, business, inheritance, or financial interests. He has no financial obligations to any foreign country (Algeria included), and he provides no financial support to any of his relatives residing in Algeria, or other countries. Nor has he ever been employed or acted for a foreign government (Algeria included), or had any contact with a foreign government.

Algeria's political and economic status

Algeria is a constitutional republic that was granted independence from France in 1962 following a negotiated accord and maintains a legal system based on French and Islamic law. According to official U.S. State Department documents, Algeria is a multiparty republic that is constitutionally constructed and has a presidential form of government that includes a bicameral parliament, whose members of both houses are elected by popular vote. *U.S. State Department Background Note on Algeria* of December 2004 (Item 6).

Algeria today is a country in transition from a state-administered to an open market economy. While oil remains the backbone of the Algerian economy, government-initiated reforms in banking, the justice system, and the private investment environment (backed by a host of reductions in bureaucratic restrictions and privatization measures) have created more diversification. Still, Algeria is currently running unemployment rates in excess of 30 percent in a country whose population exceeds 31 million.

Historically, Algeria has a poor human rights record, which has actually worsened in certain areas of the country. Aspects of its continued state of emergency continue to place restrictions on individual rights to change their government with the vote. Despite government commitments to respecting human rights, efforts of human rights groups to monitor Algerian human rights treatment have been hampered by the lack of government transparency in the country. *See U.S. Department of State Country Report on Algerian Human Rights Practices* of February 2005 (Item 7).

As Algeria gradually emerges from decades of civil strife between proponents and opponents of an Islamic state, fighting between government forces and terrorist groups has continued in rural and mountainous areas, and the country remains in a state of emergency status. *See U.S. Department of State Country Report* of December 2004 (Item 6). State Department travel warnings urge Americans to defer non-essential travel to Algeria and to carefully evaluate their security and safety should they choose to ignore cautions about travel to the country. Citing random terrorist attacks and some hostage taking over the past year, the State Department cautions both American travelers and Embassy personnel to take special security precautions when making trips outside the capital area. *See US State Department Travel Warning* of July 2005 (Item 10).

Dual citizens residing or visiting in Algeria are subject to all Algerian laws affecting U.S. citizens, as well as laws applicable to persons of Algerian nationality that impose special obligations on citizens of that country. *See U.S. State Department Consular Information Sheet* of July 2005 (Item 9). Dual nationals remain subject to Algeria's military service requirements and can be conscripted into service while on Algerian soil. While such conscripted service seems unlikely to confront Applicant, given his age and U.S. citizenship, it remains a possibility.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation

and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of

Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

security clearance. Rather, consideration must take account of cognizable risks that an applicant deliberately or inadvertently failed to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant presents as a conscientious engineer for a defense contractor who after being born and raised in Algeria, immigrated to the U.S. in 1989 with his mother and sister pursue his graduate studies. Claiming the need for an Algerian passport to aid him in his travels to and from Algeria to see his father, he recently renewed his Algerian passport.

Dual citizenship concerns necessarily entail country allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. In a different vein, the continued residence of his father and his wife's immediate family members in Algeria raises potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S. and the potential for members of Applicant's immediate and extended family being placed at risk to pressure or duress to induce Applicant to divulge classified information he might be privy to.

Foreign Preference

By virtue of his birth in Algeria to parents of Algerian descent and citizenship, Applicant was endowed with Algerian citizenship through his parents. This citizenship could not be lost except by

express renunciation, approved by the Algerian Government, which Applicant has never explored. To the contrary, two years ago he applied for the renewal of his Algerian passport (an active exercise of dual citizenship), which was approved by the Algerian government. He has not only used his Algerian passport since renewing it (*i.e.*, in September 2003), but he has pledged to retain it for use in emergency situations when he needs to travel to Algeria to see his ailing

father. Risks of his being taken hostage behind Algerian lines and denied the customary diplomatic intercession made available to U.S. citizens traveling on US passports cannot be discounted, given the country threat risks assigned Algeria by the U.S. State Department's travel advisory.

The Appeal Board has discounted convenience/force of law distinctions when appraising legal necessity passport usage in multiple return to country situations (as here). *See* ISCR Case No. 99-0424 (February 8, 2001); ISCR Case No. 99-0254 (February 16, 2000). Exercise of choice to take out and retain his Algerian passport out of desire to preserve his options when traveling to Algeria to see his father is itself a voluntary election, not a submission to legal compulsion, when made in juxtaposition to known security risks extant in traveling to a country that lacks acceptable security protections against terrorists operating within the country. By applying for and renewing his Algerian passport, Applicant displayed a conscious preference for Algeria, even if it was for perfectly logical and understandable reasons: wanting to see his father.

So, Applicant's exercise of dual citizenship through his past use and renewal of his Algerian passport is sufficient under the facts of this case to invoke Disqualifying Condition (DC) E2.A3.1.2.1 (*The exercise of dual citizenship*) and DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*) of the Adjudicative Guidelines for foreign preference. Use and/or possession of a foreign passport is considered a *per se* basis for denying or suspending a security clearance under the clarifying provisions of the memorandum of August 16, 2000 authored by the Asst SecDef forC3I ("the ASDC3i memorandum"), unless the foreign passport is surrendered, or the Applicant obtains official approval for its use from the appropriate agency of the US Government.

Nothing in the ASDC3i memorandum on foreign passports indicates that possession of a foreign passport may be extenuated or mitigated by an applicant's showing of personal hardship and delay typically encountered in utilizing the visa process involved with travel abroad on a US passport. DOHA's Appeal Board has construed the ASDC3i memorandum to be legally binding on DOHA administrative judges and the Board. *See* ISCR Case No. 02-07625 (May 2004). Neither judges nor the Board retain jurisdiction to review or pass judgment on the wisdom or desirability of the ASDC3i memorandum. *See* ISCR Case No. 02-04237 (August 2003).

Concerns over continued Applicant preference for Algeria are considerable for so long as he retains his Algerian passport and dual Algerian citizenship. While his voting in an Algerian national election before he became a naturalized citizen is not by itself indicative of a continuing preference for Algeria after he became a naturalized U.S. citizen, it is an exercise of Algerian citizenship that may reflect continued Applicant interest in Algeria and sufficient under the circumstances extant to warrant some application of E2.A3.1.2.8 (*Voting in foreign elections*) of the Guidelines for foreign preference. With unsettled questions still very much in evidence about Applicant's reluctance to take any bold steps towards surrender of his Algerian passport and renunciation of his Algerian citizenship, too many preference questions loom at the present time to credit Applicant with satisfying the heavy mitigation burden imposed on applicants by the Appeal Board.

Considering all of the circumstances surrounding Applicant's dual citizenship exercise and absence of meaningful mitigation efforts, conclusions warrant that Applicant's exhibited active dual citizenship by his taking out an Algerian

passport. In so doing, he has demonstrated a preference for Algeria that has not been mitigated by documented surrender of the passport and expressed intentions to renounce his dual Algerian citizenship. Such firm Applicant commitments are required to satisfy expressed Appeal Board burden requirements when it comes to successfully discounting residual security risks that exist with his continued exercise of dual Algerian citizenship. Unfavorable conclusions warrant with respect to sub-paragraphs 1.a through 1.e Guideline C.

Foreign Influence

Besides foreign preference concerns, Government finds security risks associated with (a) Applicant's father being a citizen and resident of Algeria, (b) his extended family members (to include aunts, uncles, and cousins) residing in Algeria, and (c) his traveling to Algeria in 2001, 2002 and 2003. His family ties are enough to invite application of Disqualifying Condition (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*) of the Adjudicative Guidelines for foreign influence.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments continue to be governed by the same Change 4 requirements of the Directive for appraising the security risks associated with the individual's having family abroad, which include both common sense assessments of country risks and information available from public sources.

So, under these adjudicative guidelines, while an applicant with immediate family domiciled in a hypothetical hostile country might pose a risk of a hostage situation, he might conversely be able to neutralize material risks of exploitation of immediate and/or extended family members residing in a friendly country. While Algeria cannot be characterized as a particularly close ally of the US, it is not described in State Department official publications as hostile either. Based on reported terrorist activities in the country, Algeria cannot be deemed to provide an acceptable political

environment for managing hostage risks. Without such assurances, no reasonable conclusions can be reached that Applicant's immediate and extended family members are not in a position to be coerced or compromised by Algerian authorities to exert pressure on Applicant to disclose classified information.

While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Algeria is a constitutional republic, governed by executive and legislative branches whose leadership and influence is directed and circumscribed by Islamic tenets. Algeria is also a country with a considerable history of ambivalence towards America and its longstanding institutional respect for human rights and the rule of law.

Because Algeria remains a transitioning country that lacks a secure infrastructure and track record for respecting human rights and the rule of law, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's cannot be safely discounted. Algeria's strategic location and political character, when coupled with Applicant's own demonstrated preference for the country, conduce to create security concerns over risks of direct or indirect pressure or influence of an immediate or extended family member of Applicant's by Algerian authorities. These concerns are not sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships and contacts with his immediate and extended family members domiciled in Algeria.

So, given the continued presence of Applicant's father and his wife's family members in Algeria, their presence there presents potential risks of pressure and coercion. Their Algerian citizenship and residence constitutes an unacceptable risk, for which the mitigation benefits of MC E2.A2.1.3.1 (*A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States*) of the Adjudicative Guidelines may not be availed of by Applicant. Unfavorable conclusions warrant with respect to subparagraphs 2.a through 2.c of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Applicant's eligibility for a security clearance:

GUIDELINE C (FOREIGN PREFERENCE): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge

