

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is an employee of a defense contractor. She married her husband, a Moroccan citizen, over 20 years ago. He moved to the United States, became a United States citizen, and resides in the United States. His mother, brothers, sisters, and their spouses are citizens of and reside in Morocco. Applicant visits her in-laws in Morocco approximately every two years. They are not agents of a foreign power or in a position to be exploited by a foreign power forcing Applicant to chose between her loyalty to the relatives and the United States. She does not own or have inheritance rights to property owned by her husband in Morocco. Clearance is granted.

CASENO: 04-05613.h1

DATE: 12/16/2005

DATE: December 16, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05613

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

Francisco Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is an employee of a defense contractor. She married her husband, a Moroccan citizen, over 20 years ago. He moved to the United States, became a United States citizen, and resides in the United States. His mother, brothers, sisters, and their spouses are citizens of and reside in Morocco. Applicant visits her in-laws in Morocco approximately every two years. They are not agents of a foreign power or in a position to be exploited by a foreign power forcing Applicant to choose between her loyalty to the relatives and the United States. She does not own or have inheritance rights to property owned by her husband in Morocco. Clearance is granted.

**STATEMENT OF THE CASE**

On April 27, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on May 10, 2005. The SOR alleges security concerns under Guideline B (Foreign Influence), and Guideline C (Foreign Preference) of the Directive.

Applicant answered the SOR in writing on May 17, 2005, admitting all the allegations under Guidelines B and C. She requested a hearing before an administrative judge and the request was received by DOHA on May 19, 2005. Department Counsel was prepared to proceed with the case on July 21, 2005, and the case was assigned to another Administrative Judge. A notice of hearing was issued on October 5, 2005, and the other Administrative Judge convened the hearing on October 24, 2005. During the hearing, the Administrative Judge became aware that she had a conflict of interest, recused herself, and I was assigned to the case. I continued to hear the case on October 24, 2005, with no objection from Applicant or Department Counsel. Five government exhibits, four Applicant exhibits, the testimony of two Applicant witnesses, and the testimony of the Applicant were received during the hearing. The record was held

open until November 21, 2005, for Applicant to submit additional documents. DOHA received the transcript on November 9, 2005. Applicant timely submitted an additional document without objection by Department Counsel, and it was marked as an Applicant Exhibit.

## FINDINGS OF FACT

Applicant is a 57-year-old contracts manager for a defense contractor. While working for the United States military in Europe, she met her husband who was a Moroccan citizen studying culinary arts in Europe. His education was paid by the Moroccan government, which he was required to pay back by working in Morocco. Applicant and her husband were married in 1976. Upon completion of his studies in 1978, Applicant and her husband moved to Morocco for him to work in the Moroccan tourism institute to fulfill his obligation for payment of his studies. <sup>(1)</sup>

Applicant sponsored her husband's entry to the United States in 1979. <sup>(2)</sup> They have two children, born in the United States in 1982 and 1985. Applicant's husband became a naturalized United States citizen on July 16, 1987. <sup>(3)</sup> He has a current United States passport and uses that passport for his travels. His Moroccan passport expired in January 2003. <sup>(4)</sup> He considers himself a United States citizen and not a dual citizen of Morocco. He knows of no formal process to renounce his Moroccan citizenship. He is considered by Morocco a Moroccan citizen for life by virtue of being born there. <sup>(5)</sup> Applicant's husband works in the United States for an international organization. <sup>(6)</sup>

Applicant's husband's mother, three sisters, and two brothers are all citizens of and residents of Morocco. His mother is a housewife who never worked and is now elderly and ill. She receives a small subsistence from the government similar to Social Security. Applicant's husband does help with her support. All of her husband's siblings are married and their spouses are also citizens of and residents of Morocco. Two of the sisters are housewives who never worked and the other is a retired elementary school teacher. One of his brothers is a retired technician for the electrical company and the other a former teacher now repairing electronics. His brother's spouses are housewives. One sister's spouse is a retired immigration official, another is a retired commercial customs agent, and the third is still employed as a high school teacher. One of his sisters did come to the United States for a visit. Applicant considers her in-laws, good people, and she is fond of them. <sup>(7)</sup>

Applicant usually visits her husband's family in Morocco every two years. She made visits in 1997, 1999, 2002, 2003, and 2005. She normally goes with her husband and children and stays approximately three weeks. There are some trips that she and her husband may travel separately because of work schedules but their time in Morocco usually overlaps. When they go to Morocco, they usually stay with her husband's mother. They do visit the other family members since they live close to the mother. She talks to her husband's family in Morocco occasionally by phone. The family members do not have internet access.

Applicant has no financial or property interests in Morocco. Applicant's husband owns two properties in Morocco. He purchased them shortly after he came to the United States. One property is an apartment that is not occupied. The other is a commercial store that is also not occupied. Applicant's husband does not derive income from the properties, but does pay the taxes on them. Applicant is not a co-owner of the properties and the properties will be inherited by his son and then his daughter. His wife can inherit only 1/8th the value of the property. [\(8\)](#)

Applicant is well regarded by her employer. Her immediate supervisor, a retired military officer, testified he interacts with her on a daily basis in her work as a program analyst working on a contract to support the U.S. Army. He understands the requirements, risks, and needs for security clearances. She is totally reliable and dependable and has not had a security violation while holding an interim clearance. [\(9\)](#) Applicant's neighbor and co-worker testified she has known Applicant and her family for over 20 years and sees them regularly. She knows Applicant's husband and children, and does watch Applicant's home when the family is on trips. She has also worked with Applicant at the defense contractors. She has no questions concerning Applicant's reliability, trustworthiness, or fidelity. In fact, she believes Applicant is the person in the organization that is very security conscious. [\(10\)](#)

The United States government views Morocco as a moderate Arab regime, an ally against terrorism, and a free trade partner. They have long standing good relations. The country has made democratic advances, but the King still holds ultimate power. There have been terrorist attacks in Morocco, but many have been thwarted by law enforcement. Counter-terrorist actions have set back some human rights advances. United States facilities have not been targets of terrorists but the threat against United States interests remains high. [\(11\)](#)

## **POLICIES**

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." [\(12\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(13\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(14)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.<sup>(15)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(16)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(17)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(18)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(19)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>(20)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(21)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline B - Foreign Influence:** A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she maybe bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situation could create the potential for foreign influence that could result in the compromise of classified information. Contact 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 coercions, exploitation, or pressure.

**Guideline C.- Foreign Preference:** When and 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government established its case under Guideline B. Applicant's mother-in-law, brothers-in-law, and sisters-in-law in Morocco brings the matter under Foreign Influence Disqualifying Condition 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*). There is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of the person's spouse.<sup>(22)</sup> An immediate family member includes spouse, father, mother, sons, daughters, brothers, sisters.<sup>(23)</sup> Under the presumption, Applicant would have close ties of affection or obligation to her husband's mother, brothers, and sisters. Even without this presumption, Applicant has stated she has great affection for her relatives in Morocco and considers them good people. They are all citizens and residents of Morocco. I conclude the disqualifying condition has been established.

The Foreign Influence Mitigating Conditions that must be evaluated concerning the relatives in Morocco are E2.A2.1.3.1 (*a determination that the immediate family members 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*), and E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*). Applicant visits her husband's family in Morocco approximately every two years. She stays with her mother-in-law and visits her other in-laws. While she does not speak often to them, it is because of language problems and not because she does not desire to talk to them. Her contacts with them are not casual; and not infrequent. The in-laws are not agents of a foreign power since they are not engaged in intelligence work and are mainly retirees or private business people.<sup>(24)</sup> This leaves the question whether the relatives are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the in-laws and the United States. The disqualifying condition requires that a foreign power would exploit its citizens or residents in such a way as to make Applicant act adversely to the interests of the United States. A factor to consider, while not determinative, is the character of the foreign power and entities within the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States, especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country. Morocco is a modern country, with close commercial and trade ties to the United States. It is an ally with the United States in combating terrorism. There are terrorist activities in the country and its citizens have been involved in international terrorism. But it has no more incidents of terrorism or no more terrorist than other countries. While there have been human rights abuses, there have been many strides made by the government and monarchy to embrace more democratic practices. I find Applicant's in-laws in Morocco are no more vulnerable to exploitation by a

foreign power than any other person in the country. Applicant has met her burden to established Foreign Influence Mitigating Condition E2.A2.1.3.1.

The government has not established its case under Guideline C. The security concern under Guideline C is 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 interest of the united States. The security concern expressed is Applicant and her husband own commercial and residential property in Morocco valued at over \$170,000. Applicant established that her husband, and not her, own the property and that she derives no benefit from the property. In fact, if her husband passed away, her son and daughter would inherit the property and not her. She would receive a benefit from the property only if they could not inherit, but she shares the inheritance with her in-laws. Her share of the value is tenuous and small. I conclude she owns no property in Morocco, the likelihood of inheritance is minimal, and thus she has no property interests in Morocco that shows a preference for Morocco over the United States. Guideline C is resolved in favor of Applicant.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2, Guideline C: FOR APPLICANT

Subparagraph 2.a.: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean  
Administrative Judge

1. Tr. 38-41.
2. Tr. 41-43.
3. Applicant Exhibit D (Naturalization Certificate, dated Jul. 16, 1987).
4. Applicant Exhibit C (Husband's Moroccan passport, issued Jan. 9, 1998).
5. Applicant Exhibit E (Husband's letter, dated Nov. 7, 2005).
6. Government Exhibit 1 (Security Clearance Application, dated Sep. 12, 2003).
7. Tr. 49-54; Applicant Exhibit E (Letter from Applicant's husband, dated Nov 7, 2005).
8. Tr. 58-61; Applicant Exhibit E (Husband's letter, dated Nov. 7, 2005).
9. Tr. 23-27.
10. Tr. 28-31.
11. Government Exhibit 2 (Consular Information Sheet, dated Jul. 21, 2005); Government Exhibit 3 (U.S. State Department Country Report on Human Rights Practices-2004, Morocco, dated Feb. 28, 2005); Government Exhibit 4



(Congressional Research Service, Morocco: Current Issues, dated Jan. 11, 2005); and U. S. State Department, Country Report on Terrorism, dated Apr. 27, 2005) at 10.

12. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

13. Directive ¶ E2.2.1.

14. *Id.*

15. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

16. *See* Exec. Or. 10865 § 7.

17. Directive ¶ E3.1.14.

18. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

19. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

20. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

21. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

22. ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002).

23. Directive E2.A2.1.3.1.

24. *See*, 50 U.S.C. Secs. 435, 438, and 1801 (b). *See also*, ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) for a broader definition of "agent of a foreign power."