

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Applicant failed to rebut, explain, extenuate, or mitigate the falsification of his security-clearance application wherein he deliberately omitted information about two arrests and charges resulting from domestic disputes. Clearance is denied.

CASENO: 04-06528.h1

DATE: 05/16/2006

DATE: May 16, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06528

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Herman M. Sawyer, Esq.

SYNOPSIS

Applicant failed to rebut, explain, extenuate, or mitigate the falsification of his security-clearance application wherein he deliberately omitted information about two arrests and charges resulting from domestic disputes. Clearance is denied.

STATEMENT OF THE CASE

This case rose when the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 6, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline B for foreign influence, Guideline C for foreign preference, and Guideline E for personal conduct (falsification). Applicant replied to the SOR on May 23, 2005, and requested a hearing. The case was assigned to me August 3, 2005. A notice of hearing was issued scheduling the hearing for October 21, 2005. Applicant appeared--but without his counsel--who was unavailable. The hearing was continued. Another notice of hearing was issued scheduling the hearing for November 9, 2005. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript November 23, 2005.

RULINGS ON PROCEDURE

Department Counsel moved to amend the SOR to conform to the record evidence as follows: (1) subparagraph 1.b was amended to reflect that one of Applicant's half-brothers is a citizen of and a resident in Morocco and the other half-brother passed away; and (2) subparagraph 1.c was amended to reflect that two of Applicant's half-sisters are citizens of and are residents in Morocco. Applicant had no objections, and the motion was granted.

FINDINGS OF FACT

Applicant is a 48-year-old married man who is seeking to retain a security clearance for his employment as a linguist; he is fluent in several languages, including Arabic. He was born in Morocco in 1958, came to the U.S. in 1979, and became a U.S. citizen in 1989. He has lived and worked in the U.S. for the last 26 years, including obtaining a bachelor's degree in finance and a master's degree in international transactions from U.S. universities. The Defense Department granted Applicant a secret-level security clearance in June 1994, and he has since maintained a clearance in an active status (Exhibit A).

Applicant married his fourth wife in August 1999; his previous three marriages (all in the U.S.) ended in divorce. His fourth wife was born in Morocco. She immigrated to the U.S. via her marriage to Applicant, and she obtained U.S. citizenship in July 2005. Applicant and his wife have two young children, ages five and two. Also, Applicant has ten-year-old twin daughters from his second marriage.

Applicant has foreign ties or connections as follows: (1) his mother is a Moroccan citizen and a legal U.S. resident, and she lives with Applicant about half the year and spends the other half in Morocco; (2) his mother-in-law is a Moroccan citizen and a legal U.S. resident, and she is currently living with Applicant; (3) his half-brother is a citizen of and a resident in Morocco; (4) his one half-sister is a citizen of and a resident in Morocco; (5) he worked as a freelancer for the Saudi Press Agency (SPA), which is affiliated with the Saudi Arabian Ministry of Information, from about 1983 to at least July 2003; (6) during this period, he had regular contact with SPA employees and contractors, identified in Exhibit 4, who are foreign citizens; (7) he no longer works for the SPA and has no further contact with these foreign persons; (8) he has made several trips to Morocco for family visits, and in 2003, he accompanied his mother on a trip to Saudi Arabia for a religious pilgrimage; (9) he possessed a Moroccan identification card as a U.S. citizen; and (10) his most recent Moroccan identification card was issued in April 1988 and expired in March 1998.

In addition to the family members living in Morocco, Applicant has family members living in the U.S. Besides a wife, four children, mother, and mother-in-law in the U.S., Applicant has two brothers who are legal U.S. residents. His other half-sister is a legal U.S. resident, although she lives part of the year in Morocco.

On or about July 3, 2003, Applicant completed a security-clearance application (Exhibit 1). In signing the application, Applicant certified his statements were true, complete, and correct to the best of his knowledge and belief and made in good faith, and that he understood that a false statement could be punished under federal law. Concerning his police record, Applicant answered all those questions (Questions 21-26) in the negative; he did not disclose any derogatory information about his police record. In response to Question 26, Applicant answered no thereby denying that in the last seven years he had been arrested for, charged with, or convicted of any other offense(s) not listed in Questions 21-25. In other words, the question required him to disclose any relevant offense dating back to July 3, 1996.

In response to Question 26, he did not disclose that in September 1996 he had been arrested for and charged with assault of his second wife, a class I misdemeanor (Exhibit 7). In October 1996, the charge was *nolle prossed*. Likewise, he did not disclose that in January 1998 he had been arrested for and charged with making an obscene, vulgar, or profane phone call to his ex-wife, a class I misdemeanor (Exhibit 8). In February 1998, Applicant appeared with counsel before a state judge. He pleaded not guilty, was tried and found not guilty, and the charge was dismissed.

In his Answer to the SOR and his hearing testimony, Applicant denies any intent to deliberately omit, conceal, or falsify his answer to Question 26. The gist of his explanation is that he did not pay close attention to the question and his incorrect answer was an honest mistake (Transcript at 112). He also explained that the matters were in the public record and that both cases were dismissed. Likewise, in his Answer, he said that since both charges were dismissed, he did not think they were relevant.

In addition to these two offenses, Applicant was arrested for a domestic assault in February 1993, after a dispute with his second wife (Exhibits 2 and 6). Although arrested, the charge was dismissed in March 1994 (Exhibit 6). He was not required to disclose this arrest on his security-clearance application because it was beyond the scope of Question 26.

Applicant has possessed two Moroccan passports while living in the U.S. During 2003, Applicant was interviewed by special agents of the Defense Security Service, and he made several statements about his Moroccan passport. In a July 2003 interview, Applicant told a special agent that he had surrendered his passport to the Moroccan Embassy (Exhibit 2). In a sworn statement, dated July 7, 2003, Applicant denied having a Moroccan passport. He said that in March 2002, he went to the embassy and returned his passport in conjunction with informing the embassy he no longer wished to be a Moroccan citizen. In a second sworn statement, dated July 30, 2003, Applicant said that he went to the embassy in spring of 2002, and he renounced his Moroccan citizenship and relinquished his Moroccan passport (Exhibit 4). He said he signed a receipt when he returned the passport, but did not receive a copy of it. In a third sworn statement, dated October 14, 2003, he said that he recently remembered that he had not relinquished his Moroccan passport (Exhibit 5). He explained that he had moved several times and did not know where his Moroccan passport was located. He said he did not sign a receipt for turning in the passport, but did sign a statement at the embassy about attempting to renounce his Moroccan citizenship. Asked to reconcile these different statements, Applicant said he made an honest mistake, as he was confused or did not recall whether he had returned the passport to the embassy (Transcript at 114).

According to a letter, dated July 2004, from the Embassy of the Kingdom of Morocco, Applicant received a Moroccan passport in Casablanca in August 1978, and it expired in August 1983 (Exhibit A). He used this passport to enter the U.S. in 1979. According to another embassy letter, dated August 2005, Applicant received another Moroccan passport in the U.S. in May 1983, and it expired in May 1988 (Exhibit A). The second passport was then destroyed and never replaced by a new passport (Exhibit A). It appears Applicant has not possessed an active passport issued by a foreign government since May 1988, about 15 months before he became a U.S. citizen. Since becoming a citizen, Applicant has used his U.S. passport for any foreign travel.

Based on his naturalization, Applicant considers himself only a U.S. citizen. According to the U.S. State Department (Exhibit 9) and the Moroccan Embassy (Exhibit A), Applicant remains a citizen of Morocco. Despite his desire to renounce his Moroccan citizenship, Applicant understands that he is still considered a citizen of that country.

According to the State Department (Exhibits 9 and 10), Morocco is a constitutional monarchy with a parliament and an independent judiciary, however, ultimate authority is with the king. Relations between the two countries are longstanding, dating back to 1777, when the Kingdom recognized the U.S. Government. Current relations are characterized by mutual respect and friendship. According to the State Department (Exhibit 14), the Saudi Arabian Government is a monarchy governed on the basis of Islamic law; there are no political parties or national elections. The U.S. and Saudi Arabia share a common concern about regional security, oil export and imports, and sustainable development (Exhibit 14). Relations between the two countries were strained after the 9/11 terrorist attacks in which 15 of the terrorists were Saudi citizens (Exhibit 14).

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.⁽²⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ There is no presumption in favor of granting or continuing access to
⁽⁴⁾

classified information. The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽⁵⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽⁶⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁷⁾

As noted by the Supreme Court in *Department of Navy v. Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

The foreign influence allegations under Guideline B⁽⁹⁾ and the foreign preference allegations under Guideline C⁽¹⁰⁾ will be discussed together. To begin, the Defense Department granted Applicant a security clearance in 1994, and it then knew or should have known about Applicant's foreign connections. His family ties, his foreign travel, his Moroccan identification card, and his freelancing for SPA were matters that should have been considered when he was granted the clearance in 1994. Also, he stopped working for the SPA when he learned it might be a security issue. Except for his current marriage, not much has changed about Applicant's foreign connections since he was granted a clearance. The foreign influence and preference allegations are mostly old news and have marginal security significance. Also, compared with when he was granted a clearance in 1994, his ties and connections to the U.S.--and his preference for the U.S.--are now stronger. Considering the record evidence as a whole, Applicant has rebutted, explained, extenuated, or mitigated any potential security concerns for foreign influence and preference. Accordingly, Guidelines B and C are decided for Applicant.

Personal conduct under Guideline E⁽¹¹⁾ is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, based on the record evidence as a whole, the government established its case under Guideline E. The record evidence establishes that Applicant deliberately provided a false answer in response to Question 26 of his security-clearance application. His explanations to the contrary are not credible for at least two reasons. First, as a security-clearance holder since 1994, Applicant had to have known that his police record involving his second wife might cause

a problem for him when he completed his application. It is logical to conclude he omitted this information hoping it would not be discovered. Second, Applicant's inconsistent explanations for his answer to Question 26 further undermines his credibility. Given these circumstances, DC 2⁽¹²⁾ applies against Applicant.

The record evidence, however, fails to establish that Applicant made deliberately false statements about whether he had surrendered his Moroccan passport to the embassy. The evidence in support of these allegations is a muddle. The best evidence is the two letters from the embassy (Exhibit A), which tend to support Applicant. Based on the letters, it appears the last time Applicant had an active Moroccan passport was in May 1988, and that passport was destroyed at some point and another was not issued to Applicant. Given these circumstances, the record evidence is insufficient to prove that Applicant made deliberately false statements about the Moroccan passport.

I reviewed the mitigating conditions under Guideline E and conclude none apply. Falsification of a security-clearance application is a serious matter, not easily mitigated or extenuated. Considering the record evidence as a whole, Applicant failed to mitigate the security concern stemming from his false statement. Accordingly, Guideline E is decided against Applicant.

To conclude, Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline B: For Applicant

Subparagraphs a - f: For Applicant

SOR ¶ 2-Guideline C: For Applicant

Subparagraphs a - b: For Applicant

SOR ¶ 3-Guideline E: [\(13\)](#) Against Applicant

Subparagraph a: Against Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: 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. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Executive Order 10865, § 7.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. Directive, Enclosure 3, Item E3.1.14.
6. Directive, Enclosure 3, Item E3.1.15.
7. Directive, Enclosure 3, Item E3.1.15.
8. 484 U.S. at 528, 531 (1988).
9. Directive, Enclosure 2, Attachment 2.
10. Directive, Enclosure 2, Attachment 3.
11. Directive, Enclosure 2, Attachment 5.

12. E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

13. SOR ¶ 3 does not contain a subparagraph b.