

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 42-year-old software design engineer who has worked for a federal contractor since 2001. He was born in Algeria and immigrated to the U.S. in 1995. He became a naturalized U.S. citizen in 2002. He continues to possess an Algerian passport. Applicant's mother is a citizen of Algeria, who resides with him in the U.S. He has an aunt and uncle who are citizens and residents of Algeria with whom he has close ties of affection. Applicant failed to mitigate the security concerns regarding Guideline C, foreign preference, and Guideline B, foreign influence. Clearance is denied.

CASENO: 05-04128.h1

DATE: 02/28/2006

DATE: February 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No.05-04128

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 42-year-old software design engineer who has worked for a federal contractor since 2001. He was born in Algeria and immigrated to the U.S. in 1995. He became a naturalized U.S. citizen in 2002. He continues to possess an Algerian passport. Applicant's mother is a citizen of Algeria, who resides with him in the U.S. He has an aunt and uncle who are citizens and residents of Algeria with whom he has close ties of affection. Applicant failed to mitigate the security concerns regarding Guideline C, foreign preference, and Guideline B, foreign influence. Clearance is denied.

**STATEMENT OF CASE**

On September 16, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline C, foreign preference, and Guideline B, foreign influence.

In a sworn statement undated, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on November 18, 2005. The FORM was mailed to Applicant on November 23, 2005, and received on November 29, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's response was undated. The case was assigned to me on February 9, 2005.

**FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 42-year-old software design engineer who has worked for a federal contractor since 2001. He was born in Algeria and immigrated to the United States in 1995. In 2001, he returned to Algeria to visit family and get married. He became a naturalized citizen of the United States in 2002. He and his wife divorced in 2003.

Applicant admitted he exercises dual citizenship with Algeria and the United States. He possessed an Algerian passport that was issued on January 10, 2001, and the passport was to expire on January 9, 2006. He used the Algerian passport in September 2001, to visit Algeria claiming "it does not make sense to the Algerian consulate to deliver a visa to visit (sic) Algeria for a person born in that country."<sup>(2)</sup> While in Algeria he married and visited family. He is not willing to relinquish his Algerian dual citizenship or passport "as a condition of access because an Algerian is suppose to have an Algerian passport to enter the country even if they are a dual citizen."<sup>(3)</sup> He also stated he would like to keep an Algerian passport for the reasons previously noted.<sup>(4)</sup>

Applicant's parents live with him in the United States. His father was a citizen of Algeria at the time Applicant filled out his security clearance application (SCA), but on October 3, 2005, he became a naturalized U.S. citizen.<sup>(5)</sup> His mother is a citizen of Algeria who holds permanent resident status in the U.S., and is applying to become a naturalized citizen of the U.S. Both parents have resided with Applicant since he immigrated in 1995.

Applicant has an aunt and uncle who are citizens and residents of Algeria. He maintains contact with them five or six times a year.<sup>(6)</sup> His aunt is not employed and his uncle is a retired library employee. He also has two associates, whom he refers to as "old friends,"<sup>(7)</sup> who are citizens and residents of Algeria. He maintains contact with them five or six times a year through email and telephone.<sup>(8)</sup> Applicant admits that his only obligation to Algeria is his family. He plans on maintaining the same contact with family and friends as he has in the past.<sup>(9)</sup>

Algeria is a multi-party, constitutional republic.<sup>(10)</sup> It is a country where there has been a host of terrorist activities and U.S. citizens are warned about the terrorist threat there.<sup>(11)</sup> In response to the terrorist threat the U.S. has reduced the number of personnel in country. The overall security environment is dangerous. Although there has been a drop in the number of terrorist-associated incidents in the past month, it is still a concern, and random terrorist attacks still occur.<sup>(12)</sup> Terrorists target both civilian and security forces.<sup>(13)</sup> Algeria's record on human rights is poor.<sup>(14)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline C, pertaining to foreign preference, and Guideline B, pertaining to foreign influence, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(15)</sup> The government has the burden of proving controverted facts.<sup>(16)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(17)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.<sup>(18)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(19)</sup>

No one has a right to a security clearance<sup>(20)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(21)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(22)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(23)</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.

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

Guideline C-Foreign Preference is a security concern because 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.

Guideline B-Foreign Influence is a concern because a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

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 below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines C and B.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*), and FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*) apply. Applicant obtained and used an Algerian passport before becoming a naturalized citizen of the United States. He continues to possess the passport. It was due to expire in January 2006, and no information was provided regarding its status, however he stated he wants to maintain his Algerian passport. Applicant is not willing to renounce his dual citizenship with Algeria. The possession and/or use of a foreign passport is an exercise of dual citizenship. A foreign preference can be shown by an applicant's exercise of the rights and privileges of foreign citizenship for reason of personal convenience or expediency.<sup>(24)</sup> Use of a foreign passport for personal convenience is not extenuating or mitigating.<sup>(25)</sup> The above disqualifying conditions apply.

I have considered all the mitigating conditions and especially considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*), FP MC E2.A3.1.3.2 (*Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship*) and FP MC E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*). Applicant was born in Algeria and his parents were Algerian citizens; FP MC E2.A3.1.3.1 applies. Although Applicant obtained an Algerian passport prior to becoming a U.S. citizen, he has not relinquished it and contemplates maintaining it for the future, presumable to travel there. He has not expressed a willingness to renounce his dual citizenship. In accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport." Surrender of the

passport contemplates returning it to the issuing authority. No evidence was presented by Applicant that he has surrendered his Algerian passport or made any attempt to. Rather he expressly contemplates retaining it. I find neither of the above mitigating conditions apply.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI 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*), and FI DC E2.A2.1.2.2 (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) apply. Applicant's mother is a citizen of Algeria and a permanent resident of the U.S. She is an immediate family member who lives with Applicant in the U.S. An immediate family includes spouse, father, mother, sons, daughters, brothers, and sisters. (26) Applicant maintains contact five or six times a year with his uncle and aunt who are citizens and residents of Algeria. He claimed his only ties of obligation to Algeria are his family, presumably the uncle and aunt he has contact with. I find Applicant has ties of affection to his extended family and the above disqualifying conditions apply to his mother, who shares living quarters with him, and his uncle and aunt, with whom he has ties of affection. He also has contact with two friends whom he refers to as "old friends" who are citizens and residents of Algeria. He maintains contact with them five or six times a year. I find he has some sense of affection to these two individuals that he refers to as "old friends," and therefore I find the above disqualifying condition applies.

I have considered all the mitigating conditions and especially Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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*), and FI MC E2.A2.1.3.3 (*Contacts and correspondence with foreign citizens are casual and infrequent*). Applicant's mother has lived with him in the U.S. since 1995. She is a permanent resident of the U.S. Her husband, Applicant's father, is now a naturalized citizen of the U.S. and she has applied to become one. There is no evidence Applicant's mother is employed and thus she is not an agent of a foreign power. I find because she resides in the U.S. with Applicant and is pursuing naturalization she is not in a position to be exploited. Therefore, Applicant has mitigated the security concerns regarding his mother.

Applicant maintains regular contact with his aunt, uncle and friends in Algeria. He considers his only obligations to Algeria to be family. Therefore, I find his relationship with his aunt and uncle to be of the type that could be exploited due to his sense of obligation to them. There is no evidence his aunt is employed and is therefore not an agent of a foreign power. Also as a retired library employee, his uncle is also not an agent of a foreign power. Applicant's contact is not considered casual and infrequent, as he maintains regular contact with them. However, with regard to his friends, I find although he has contact with them he does not have the same sense of obligation that could potentially be exploited. Therefore, I find he has mitigated the concerns regarding his two friends in Algeria, but failed to mitigate the security concerns regarding his aunt and uncle.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their

acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by foreign preference and foreign influence concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline C, and Guideline B are decided against Applicant.

### **FORMAL FINDINGS**

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

#### Paragraph 1 Guideline C AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

#### Paragraph 2 Guideline B AGAINST THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: Against the 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.

Carol. G. Ricciardello

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. Item 3.
3. Item 6 at 2.
4. Answer submitted in response to FORM, undated.
5. Item 4; Answer submitted in response to FORM.
6. Item 6 at 4.
7. Answer submitted in response to FORM.
8. *Id.*
9. *Id.* at 5.

10. Item 7 at 1.
11. *Id.*
12. Item 8.
13. Item 9.
14. *Id.*
15. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).
16. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
17. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
18. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
19. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. *Egan*, 484 U.S. at 531.
21. *Id.*
22. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
23. Executive Order 10865 § 7.
24. ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003)
25. ISCR Case. No. 99-0424, 2001 DOHA Lexis 59 at \*47 (App. Bd. Feb 8, 2001)
26. Directive E2.A2.1.3.1.