

DATE: October 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04287

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's wife, a citizen of Morocco, resides with him in the U.S. Her parents are citizens and residents of Morocco. Applicant traveled to Morocco at least five times since 1999 to visit family and a friend. Applicant's sister, a U.S. citizen, is employed in the U.S. by a Middle-Eastern government to identify qualified undergraduate and graduate students from that country and to assist them with entry to the U.S. on student visas. Applicant's familial and friendship ties to Morocco and his sister's employment by a foreign government raise serious Guideline B security concerns because they could be exploited by terrorist groups, resulting in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 27, 2005, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the Directive. On December 12, 2005, Applicant answered the SOR in writing and elected to have his case determined on the administrative record. On June 27, 2006, Applicant requested a hearing before a DOHA administrative judge. The case was assigned to me on July 20, 2006. I convened a hearing on September 18, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced three exhibits, and offered eight documents for administrative notice. Applicant introduced no exhibits and called one witness. The Government's exhibits were numbered 1 through 3, and they were admitted without objection. The Government's documents offered for administrative notice were numbered I through VIII and were admitted to the record without objection. On September 27, 2006, DOHA received the transcript (Tr.) of the proceeding.

RULING ON PROCEDURE

Department Counsel moved to amend the SOR by adding an allegation, designated ¶1.e., specifying the name of the

embassy that employed Applicant's sister as an advisor to students seeking visas to study in the U.S. The motion to amend was served on Applicant on July 19, 2006. At the hearing, Applicant did not object to the motion, and it was granted.

FINDINGS OF FACT

The amended SOR contains five allegations of disqualifying conduct under Guideline B, Foreign Influence. In his answer to the SOR and in his testimony, Applicant admitted all five allegations and offered additional mitigating information. Applicant's admissions are incorporated as findings of fact.

Applicant is 40 years old and employed as an armed security officer by a government contractor. He holds a second job in security with another private company because it provides him with inexpensive health insurance for his family. Applicant became a U.S. citizen in September 1990. He holds three associate degrees from a U.S. community college. (Ex. 1; Tr. 47, 47.)

Applicant married a citizen of Morocco in 1993. The couple divorced in 1997. Applicant has an eleven-year-old son from the marriage. He believes his first wife is now a U.S. citizen. Applicant married a second time in 2001. His second wife is a citizen of Morocco and resides with him in the U.S. Applicant and his second wife are the parents of a three-year-old daughter. (Ex. 1; Tr. 47, 50-51.)

Applicant's second wife's parents are citizens and residents of Morocco. Applicant and his parents-in-law are not on friendly terms. The parents-in-law opposed their daughter's marriage to Applicant. Applicant attributes their animosity to the fact that he is half Arab and his parents-in-law are Berbers. (Tr. 32-33,38.)

Applicant's wife has yearly contact with her mother. The mother comes to the U.S. every other year to visit her daughter, and while she is in the U.S., she resides in Applicant's home. In the year following her mother's visit to the U.S., Applicant's wife travels to Morocco to visit her parents. In August 2006, she took their young daughter to Morocco to visit her parents. (Tr. 38, 51-52.)

Applicant holds his older sister, a naturalized U.S. citizen, in high regard. Applicant's sister is twelve years his senior. Because their mother was employed outside their home in Morocco when Applicant was a small child, his sister assumed responsibility for his care. Applicant referred to his sister as "his second mother." (Tr. 39-40.) During his childhood in Morocco, Applicant also became close to his sister's fiancé, a citizen and resident of Morocco, who is currently employed as a sales manager for a privately-owned airline company. (Tr. 88.) Applicant asserted the fiancé actually raised him. Although his sister never married the fiancé, Applicant maintained a friendship with him and considered a visit with him to be his "first priority" when he traveled to Morocco. (3) (Tr. 43.)

Applicant traveled to Morocco in 1999, 2001, 2002, 2003, and 2005. Because his mother is a senior citizen, Applicant tries to accompany her on her trips to Morocco when he is able to do so. When he traveled to Morocco in 2001 and 2003, Applicant stayed in the home of his sister's former fiancé, with whom he maintains occasional telephone contact. (Tr. 40-41,43-44.)

Applicant's sister, who is responsible for the support of her two children, appeared as a witness. She testified she had acquired law degrees in Morocco and the U.S. She is fluent in English, Arabic, and French, and she became a U.S. citizen in 1988. From 1984 to 1993, Applicant's sister worked in the U.S. for Middle Eastern country A (4); from 1995 until 1999, she was employed in the U.S. by Middle Eastern country B; and from 2003 to the present, she has been employed in the U.S. by Middle Eastern country C. (Tr. 57-59, 61-63, 80-82.) Countries A, B, and C are located on the Arabian peninsula.

As an employee of these three governments, Applicant's sister was charged, along with other responsible employees, with carrying out programs to sponsor and facilitate the enrollment of students from the three countries as undergraduate and graduate students at U.S. universities. (Tr. 55-57, 62, 64.)

Once the students arrived in the U.S. and were enrolled in colleges and universities, Applicant's sister also served as an

advisor and counselor to them. (Tr. 65-66.) Applicant's sister's jobs were located in the cultural affairs sections of the countries' embassies. Many of her fellow employees in these jobs were U.S. citizens, either naturalized or native born. (Tr. 72-73.)

I take administrative notice that Morocco, located in North Africa, is a constitutional monarchy, wherein ultimate power resides with the King, who may, at his discretion, terminate the tenure of any minister, dissolve the Parliament, call for new elections, or rule by decree. The King is the head of the military and the religious leader of the majority Sunni Moslem population. Morocco is recognized as a moderate Arab state, and it maintains close relations with Europe and the United States. It was among the first Arab and Islamic states to denounce the September 11, 2001 terrorist attacks and to declare its solidarity with the U.S. in the war against terrorism. In May 2003, Moroccan suicide bombers attacked sites in Casablanca, killing more than 40 people and wounding over 100. More than a million Moroccans subsequently demonstrated to condemn the attacks. (Background Note Morocco, U.S. Department of State, July 2005: Government Document for Administrative Notice I.)

I also take administrative notice that country B is governed by a hereditary ruler and has a population of less than one million persons, 80 percent of whom are foreigners with temporary resident status. Moreover, foreign workers make up 52 percent of country B's total population and 88 percent of its total labor force. Country B currently enjoys a strong and expanding relationship with the U.S. Country B and the U.S. cooperate in regional security matters. For its part, country B emphasizes education as a key to its continued growth and development, and, accordingly, it encourages many of its students to study in the U.S. Country B has also developed cooperative educational ventures with several U.S. universities. (Government Document for Administrative Notice IV)

Additionally, I take administrative notice that country C enjoys friendly relations with the U.S. Like country B, country C hosts many foreign residents and workers. Of its estimated population of approximately 4.5 million, only 21% are citizens of country C. Country C was one of only three countries to have recognized the Taliban as the legitimate government of Afghanistan in 1996. During the five-year period of Taliban rule, country C allowed the Afghan airline to operate service to country C. Many U.S. officials believed that Al Qaeda operatives spent time in country C, and two of the hijackers in the September 11, 2001 attacks were country C nationals. Since 2002, however, country C has aided in the arrest of a senior Al Qaeda operative and has provided strong assistance and cooperation in the war on terrorism. (Government Document for Administrative Notice VIII.)

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

In the amended SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother-in-law and father-in-law are citizens and residents of Morocco (¶ 1.a.); that Applicant's sister, a citizen of the U.S., was employed as a student advisor by the government country B (¶ 1.b.); that Applicant traveled to Morocco in at least 1999, 2001, 2002, and 2003 (¶ 1.c.); that Applicant resided with his sister's ex-fiancé during a three-week trip to Morocco in 2002 and maintains contact with him (¶ 1.d.); and that Applicant's sister is currently employed as a student advisor by the government of country C (¶ 1.e.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents or residents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

The application of disqualifying conditions under the Foreign Influence guideline is not limited to countries hostile to the U.S. ISCR Case No. 02-18668 at 4 (App. Bd. Feb. 10, 2004.) The U.S. has a compelling interest in protecting and safeguarding classified information from persons, organizations, or countries not authorized to have access to it, even if their interests are not opposed to those of the U.S. Moreover, history has demonstrated that individuals have wrongfully passed classified information to countries not hostile to the U.S., and terrorist acts against the U.S. and its allies have been carried out by individuals residing in or citizens of countries not hostile to the U.S.

Applicant's case requires the recognition that international terrorist groups are operating in the North African and Arabian peninsula regions encompassing Morocco and countries B and C. The high number of temporary residents and non-citizens in countries B and C raise concerns about increased opportunities for terrorism, espionage, and other coercive actions that threaten U.S. security interests. American citizens with immediate family members or close associates who are citizens or residents of Morocco or countries B and C could be vulnerable to coercion, exploitation, or pressure.

Applicant admitted five allegations in the SOR and offered as mitigating circumstances his Moroccan in-laws' dislike of him, his limited telephone contact with his sister's former fiancé, his need to accompany his aged mother on her trips to Morocco, and his sister's need to work as an employee of Embassies B and C in order to support her family. He also asserted his loyalty and fidelity to the U.S.

However, additional security concerns remain. Applicant's admissions raise security concerns under Disqualifying Conditions (DC) E2.A2.1.2.1., E2.A2.1.2.2., E2.A3.1.2.3, and E2.A2.1.2.6. Applicant's wife is a citizen of Morocco.⁽⁵⁾ Her parents are citizens and residents of Morocco. The presence of these immediate family member in Morocco raises security concerns under E2.A2.1.2.1. of Guideline B. Applicant's wife has close ties of affection and obligation to her mother and father. She travels to Morocco every other year to spend time with her parents, and her mother comes to visit her and stays in Applicant's home every second year as well. The fact that Applicant shares living quarters with his wife, a citizen of Morocco, and every other year with his mother-in-law, a citizen and resident of Morocco, raises security concerns under DC E2.A2.1.2.2. In his answer to the, SOR and at his hearing, Applicant acknowledged five trips to Morocco in 1999, 2001, 2002, 2003, and 2005. He also acknowledged that during his travels to Morocco in 2001 and 2002 he spent time in the home of his sister's former fiancé, a person he makes it a priority to visit when he is in

orocco.

Additionally, Applicant is close to his sister, a U.S. citizen, who has been employed since 2003 by a foreign government (country C) and who was employed by another foreign government from 1995 to 1999 (country B). Applicant's sister's employment by two foreign governments raises security concerns under DC E2.A2.1.2.3. and DC E2.A1.2.6. because her employment could make Applicant vulnerable to coercion, exploitation, or pressure by individuals in those countries who are hostile to the U.S. and its policies.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. Mitigating Condition (MC) E2.A2.1.3.1. In reviewing the scope of MC E2.A2.1.3.1., DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760, at 4 (App. Bd. Feb. 18, 2005). Thus, foreign connections derived from marriage and not from birth can raise Guideline B security concerns. While the evidence does not establish that Applicant's mother-in-law and father-in-law or his friend, who is his sister's former fiancé, are agents of a foreign power, they are living in an unstable region where groups with interests antithetical to the United States are not constrained from acting against U.S. interests, and they therefore are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the persons involved and the United States. Accordingly, MC E2.A2.1.3.1. does not apply to Applicant's parents-in-law or his sister's former fiancé.

The application of MC E2.A2.1.3.1. to Applicant's case also requires an examination of whether his sister is an agent of a foreign power. Applicant's sister has been employed by foreign government C since 2003. From 1995 to 1999 she was employed by foreign government B. Her duties have been carried out under the supervision and direction of the cultural divisions of the countries' embassies. DOHA's Appeal Board has determined that an employee of a foreign government need not be employed at a high level or in a position involving intelligence, military or other national security duties to be an agent of a foreign power for purposes of Guideline MC E2.A2.1.3.1. ISCR Case No. 02-24254 at 5-6 (App. Bd. Ju. 29, 2004.) The record clearly establishes that Applicant's sister, in her positions as an employee of country C, and earlier of country B, is and has been an agent of a foreign power as defined by DOHA's Appeal Board. Accordingly, MC E2.A2.1.3.1. is inapplicable to the allegations in the SOR that Applicant's sister is and was an agent of a foreign power.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. While Applicant argues his relations with his parents-in-law are unfriendly, his wife's contacts with her parents, who are citizens and residents of Morocco, are frequent. Applicant's mother-in-law comes to visit her daughter every other year, and Applicant's wife returns to Morocco every second year to visit her parents. Applicant places priority on visiting his friend, his sister's former fiancé, when he travels to orocco, and stays in his friend's home. While he only speaks with the friend once a year or so, he regards him as a family member, and is bound to him by ties of familial affection or obligation. Applicant's wife's contacts with her parents are also close and familial. Accordingly, mitigating condition E2.A2.1.3.3. does not apply to Applicant's familial relationship with his close family friend in orocco or with his wife's relationship with her parents.

Nothing in Applicant's answers to the SOR suggested he was not a loyal American citizen and a credit to his adopted country. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.b. through 1.e. under Guideline B of the amended SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

DECISION

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. In an affidavit given to a special investigator for the U.S. Office of Personnel Management, Applicant stated he spoke on the telephone about two or three times a year with his sister's former fiance, but did not consider the relationship to be close. (Ex. 3 at 3.)
4. Applicant's sister's employment by Embassy A was not alleged in the SOR.
5. Applicant's wife's Moroccan citizenship was not alleged in the SOR.