

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant exercised dual citizenship by renewing and using a passport issued by his native Algeria after he had become a U.S. citizen. The foreign preference concerns raised by his possession and use of an Algerian passport are mitigated by the surrender of his expired Algerian passport with no intent to renew it. Foreign influence concerns engendered by the Algerian citizenship and residency of his father and seven of his nine siblings are overcome by Applicant's substantial ties to the U.S. developed over the past 20 years. Clearance is granted.

CASENO: 06-24797.h1

DATE: 09/06/2007

DATE: September 6, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-24797
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Anjali Chaturvedi, Esq.
Rebekah J. Stafford, Esq.

SYNOPSIS

Applicant exercised dual citizenship by renewing and using a passport issued by his native Algeria after he had become a U.S. citizen. The foreign preference concerns raised by his possession and use of an Algerian passport are mitigated by the surrender of his expired Algerian passport with no intent to renew it. Foreign influence concerns engendered by the Algerian citizenship and residency of his father and seven of his nine siblings are overcome by Applicant's substantial ties to the U.S. developed over the past 20 years. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on January 23, 2007, detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on February 15, 2007, and elected to have a hearing before an administrative judge. The case was assigned to a DOHA administrative judge on May 9, 2007, and transferred to me on May 15, 2007.

On June 21, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. One government exhibit (Ex. 1) was admitted. Exhibit 2 was rejected on Applicant's objections as the document was largely illegible. Applicant's case consisted of 13 exhibits (A-M) and the testimonies of a coworker and of a neighbor in addition to his own. A transcript (Tr.) of the hearing was received by DOHA on July 6, 2007.

RULINGS ON PROCEDURE

On April 20, 2007, the government requested that administrative notice be taken of several facts concerning Algeria. The request was based on U.S. Government issuances and statements: from the U.S. State Department, *Consular Information Sheet, Algeria*, dated March 7, 2007, *Background Note: Algeria*, dated February 2007, *Travel Warning, Algeria*, dated March 22, 2007, *Country Reports on Terrorism: Chapter 2 Middle East and North Africa Overview*, dated April 30, 2007, *Country Reports on Terrorism: Chapter 5 Middle East and North Africa Overview*, dated April 28, 2006, *Country Reports on Human Rights Practices-2006*, dated March 6, 2007, and *U.S. Condemns Terrorist Attacks*, April 11, 2007; from the Congressional Research Service *Algeria: Current Issues*, dated February 16, 2005; from the National Counterintelligence Executive a statement before the House Judiciary Subcommittee on Immigration, Border Security & Claims on September 15, 2005, and a report, *The National Counterintelligence Strategy of the United States of America 2007*; and from the Director of National Intelligence a statement before the Senate Armed Services Committee, *Annual Threat Assessment of the Director of National Intelligence*, dated February 27, 2007. Applicant was granted until June 8, 2007, to file any objections and/or propose alternative facts for administrative notice.

On June 7, 2007, Applicant's counsel submitted a response, including proposed factual findings, argument in support of Applicant's clearance, and objections on the ground of relevance to considering the government's reports. Applicant submitted additional facts for administrative

notice concerning improvement in Algeria's stability and foreign relations should the government's request be granted.¹

Authority to consider the requests is set forth in ¶ E3.1.10 of Department of Defense Directive 5220.6 (*The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner*). The DOHA Appeal Board has ruled that administrative or official notice in administrative proceedings is broader than judicial notice under the Federal Rules of Evidence. In ISCR Case No. 02-24875 (decided Oct. 12, 2006), the Appeal Board found no error by a DOHA administrative judge who took administrative notice of a U.S. State Department Country Report, as the document was an official U.S. Government report relevant to the issues in the case before him, and it was provided in advance to the applicant who had an opportunity to rebut its contents or to present alternative information.

Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case before me. After weighing the reliability of the source documentation, and assessing the relevance and materiality of the facts proposed by the parties, I took administrative notice of certain facts concerning Algeria and Algeria's relationship with the U.S., as set forth below.

FINDINGS OF FACT

In the SOR, DOHA alleged under Guideline B that Applicant's father, two brothers, and five sisters, are resident citizens of Algeria (¶ 1.a) and that Applicant traveled to Algeria twice in 2002 (¶ 1.b). Under Guideline C Applicant was alleged to exercise dual citizenship with Algeria and the U.S. (¶ 2.a), to have maintained an active Algerian passport until March 2003 after becoming a U.S. citizen (¶ 2.b), and to have used his Algerian passport in preference to his U.S. passport to enter and/or exit Algeria since June 1990 (¶ 2.c).

Applicant admitted the Algerian residency and citizenship of his family members and his travel to Algeria, but denied he was susceptible to foreign influence because of these foreign ties. Similarly, Applicant admitted his dual citizenship and that he had held an Algerian passport used to travel to Algeria, but he contested the implication of a foreign preference.

Applicant's admissions are accepted and incorporated as findings of fact. After a thorough consideration of the pleadings, exhibits, and transcript, I make the following additional findings with respect to Applicant and also his Algerian ties.

Applicant is a 49-year-old senior systems engineer who has worked for his current employer, a defense contractor, most recently since February 2005. He was granted an interim secret clearance for about a year and a half until it was withdrawn in December 2006. Applicant requires a clearance for his duties in computer systems engineering.

Applicant was born in Algeria in December 1957. The third of ten children, he left his parents and siblings behind in Algeria in 1977 when he came to the U.S. to pursue his undergraduate

¹Applicant's response of June 7, 2007, was marked and admitted as Exhibit M.

education. In December 1980, he completed his bachelor of science degree. He pursued graduate studies in electrical and computer engineering at the same private university in the U.S., and earned his doctorate in May 1989.

As an undergraduate, Applicant traveled to Algeria to see his family members about once a year. Applicant did not go to Algeria as a graduate student as he understood he would have to serve in the Algerian military if he went to Algeria. Sometime in the late 1980s, Applicant was included in a general amnesty from fulfilling compulsory military service for Algeria.

While in graduate school, Applicant met his future spouse, a native-born U.S. citizen. She persuaded him to remain permanently in the U.S.. They married in May 1986, and subsequently had two daughters, who were born in October 1989 and March 1992.

In March 1987, Applicant went to work as a senior research data analyst for a defense contractor while continuing to work on and complete his thesis for his doctorate degree. Applicant acquired his U.S. citizenship through naturalization in late June 1990. He vowed to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. Applicant took no action to formally renounce his Algerian citizenship. He continued to retain an Algerian passport even though he was granted his U.S. passport shortly after his naturalization. A few months after he became a U.S. citizen, Applicant and his spouse purchased their current residence. They also traveled to Algeria in about August 1990. Applicant, his spouse, and infant daughter stayed with his parents while in Algeria.

In January 1992, Applicant was granted a secret-level security clearance for his duties supporting U.S. Air Force missions involving the study and mathematical modeling of atmospheric phenomena. Despite his growing expertise in near-space particle populations and interactions, Applicant elected to leave the job for a senior engineer II position with his present employer in March 1997. His secret clearance was transferred to his new employer for his duties on a ground radar project. In November 1998, Applicant traveled to Algeria on his Algerian passport, renewed in March 1998 for a five-year term by the Algerian Embassy. Applicant stayed with family members while in Algeria. Applicant did not report his foreign travel to the security office as he was told by his supervisor that he only had to report business trips. Applicant was not actively accessing classified information at that time since he was working on an unclassified air traffic control program. In November 2000, Applicant began employment with an electronic design automation company, and his security clearance was inactivated. He was laid off from that job in June 2002.

Applicant traveled to Algeria in March 2002 to visit his ill mother. In August 2002, he returned to Algeria, this time with his spouse and daughters, for his mother's memorial service on her death. On both trips in 2002, he entered and exited Algeria on his Algeria passport, which subsequently expired in March 2003, even though he held a U.S. passport issued to him in late August 2001. Applicant saw no problem with using his Algerian passport since it had not been an issue with his previous clearance and so he did not attempt to get a visa so that he could travel on his U.S. passport. Apart from routine border checks, Applicant did not have any contact with Algerian government officials during his trips. Applicant used his U.S. passport when traveling to foreign countries other than Algeria.

Applicant provided consultant services from January 2003 to about March 2005, when he then returned to work for his current employer. He was granted an interim secret clearance for his duties. At his employer's request, Applicant completed a security clearance application (e-QIP) on December 21, 2005.² He disclosed his dual citizenship with the U.S. and Algeria since his U.S. naturalization in late June 1990, and his renewal of his Algerian passport to occasionally visit his father. Applicant reported he had made two short trips to Canada in September/October 2004 to visit his sister, an Algerian citizen, who had immigrated there from Algeria, and two brief visits to Algeria in 2002 to see his ill mother and then for her burial. Applicant also disclosed that en route home from Algeria in April 2002, he had stopped in France for a few days to visit friends. Applicant indicated on his clearance application that his father and seven of his nine siblings were resident citizens of Algeria. He disclosed that one brother, a dual citizen of the U.S. and Algeria since his U.S. naturalization in March 2004, was a U.S. resident.

On January 23, 2007, DOHA issued an SOR to Applicant, alleging foreign preference concerns raised by his dual citizenship with Algeria, and his possession and use of an Algerian passport after he had acquired U.S. citizenship, and foreign influence concerns because of the Algeria citizenship and/or residency of his father and siblings and his travel to Algeria twice in 2002. On February 15, 2007, Applicant admitted the facts alleged in the SOR while denying they raised security disqualifying concerns of foreign preference or foreign influence. On April 13, 2007, Applicant turned in his expired passport to the Algerian Embassy, notifying them that he was renouncing his citizenship. He requested some guarantee that he would be allowed to visit his family members in Algeria, and was notified that he and his family would be granted visas if they were to go to Algeria in the future. Applicant requested written confirmation of his return of the passport and renunciation of his Algerian citizenship. On April 27, 2007, an embassy official certified that Applicant had "returned definitively" to the Algerian Embassy his Algerian passport issued on March 30, 1998, and expired March 29, 2003.

Applicant has never voted in an Algerian election. In addition to his home in the U.S., which is valued at about \$550,000, he has monies on deposit in a credit union in the U.S. and a retirement account. He has no foreign financial investments or assets. Applicant has been active in his community as a player in an adult soccer league and as a coach and referee for youth soccer games. Applicant is held in high regard by his friends and neighbors. His next-door neighbor, a staff attorney with the state's ethics commission, has met some of Applicant's family members from Algeria. He knows of no reason to question Applicant's ability or commitment to protect U.S. classified information.

Applicant handled classified information appropriately in his work in ionospheric research in support of the Air Force from 1992 to 1997. His former employer has no reservations about Applicant's loyalty to the U.S. and is of the opinion it would be a disservice to deny him a security clearance "not only to him, but also to present and future beneficiaries of [Applicant's] fully committed life and career in the United States" (*see* Ex. G). Applicant continued his unblemished

²Applicant attested that he submitted in March 2005 an Electronic Questionnaire for Investigative Processing (e-QIP) Investigation Request #382674 in order to reactivate his security clearance and as a result was issued an interim security clearance; that due to either a computer glitch or the company's move from one facility to another, he submitted the same form in spring 2006 (Ex. M). The only e-QIP in the hearing record is dated December 21, 2005 (Ex. 1). It is not clear what information Applicant reported on the initial application, assuming one was submitted to his employer.

record of handling classified information when he accessed secret-level information for his current employer (*see* Ex. L). Several coworkers who have had the opportunity to work closely with him over the past two years attest to Applicant's vigilant attitude toward his security responsibilities, to his contributions to the defense of the U.S., and to his trustworthiness (*see* Ex. H, I, J, K).

As of June 2007, Applicant's father and seven of his nine siblings (two brothers, five sisters) were resident citizens of Algeria. At age 79 and retired, Applicant's father still owns his own truck in which he transports building materials used in the construction trade primarily for private companies. Since about 2000, he has been building a residence in Algeria. Applicant sent him between \$2,000 and \$3,000 in 2000 for the construction and \$500 in 2005. Applicant telephones his father about once a month to inquire into his well-being. Applicant speaks to those of his siblings who happen to be present when he calls his father.

The elder (age 47) of his brothers in Algeria is in charge of equipment maintenance for a private masonry firm. He and his spouse have three children, and his spouse is not employed outside the home. He used to work for a government-owned enterprise. Applicant's contact with this brother is about once every few months, when he happens to be at their father's house when Applicant telephones. The younger brother (age 41) in Algeria is a self-employed repairman of electronics equipment. He is married with two children but still lives with Applicant's father. Applicant's contact with him is limited to an occasional (every few months) hello.

Applicant's two older sisters, ages 54 and 52, are housewives in Algeria. The elder sister's husband operates his own auto body repair shop with their twenty-something-year-old son. The younger has four children and is married to a car dealer. In part due to Applicant's advocacy on their behalf, the four youngest of Applicant's sisters pursued higher education. One sister (age 43) is head veterinarian in an Algerian clinic and is married to a civil engineer employed by a government-owned company that has not yet been privatized. They have three children. Another sister (age 35) is a radiologist in a government-funded hospital in Algeria. She had lived with their father before she got this job and moved away within the last year to just north of the Saharan desert. Applicant's youngest sister (age 32) has an ecology degree and works as a quality and health inspector in a private poultry laboratory. She still lives with Applicant's father, and Applicant speaks usually when he calls his father's home. Applicant has not discussed his work with his family members in Algeria.

Applicant gave his fourth eldest sister (age 39) \$3,000 in about 2002 to emigrate to Canada. A current resident and citizen of Canada, she is married and has one child. Her husband recently earned his college degree and was working in a temporary job as of June 2007. Applicant visited this sister in Canada in 2004, and he telephones her once a month on average. The brother who is a U.S. resident citizen works as a custodian at a public middle school. He is married to a preschool teacher who is also a naturalized U.S. citizen.

Administrative notice is taken of the following relevant facts pertinent to Algeria as verified by official U.S. Government publications. Algeria is a multiparty, constitutional republic that has been under a state of emergency since 1992 because of "persistent terrorism." Terrorist violence in the country resulted in more than 100,000 deaths during the 1990s. In the years since the current president of Algeria was first elected in April 1999, the security situation in Algeria has improved

markedly.³ Terrorists (primarily the Salafist Group for Preaching and Combat or GSPC) continued to target civilians, security forces, and infrastructure by late 2005, although Algeria had made impressive gains against terrorist groups operating in the country. With its base of support eroding in Algeria, the GSPC sought to align itself with al-Qaida and other extremist groups.⁴ Algeria was included among the countries in the Middle East and North Africa that the U.S. State Department considered had made impressive strides against terrorists in 2006. For the majority of 2006, the security situation in Algeria remained remarkably unchanged, marked by stability in the major urban areas and low-level terrorist activities in the countryside. During the last quarter, there was an uptake in terrorist attacks after al-Qaida accorded the GSPC affiliate status, including one in December 2006 where the GSPC ambushed expatriate workers of an American oil services company. According to the U.S. State Department, the Algerian security services and military remained capable of handling the prolonged effort against internal terrorist threats and continued to be a reliable ally of the U.S. in the War on Terror.⁵ The recent terrorist attacks directed against foreigners in Algeria led the U.S. State Department to issue a travel warning in March 2007 to apprise U.S. citizens of the significant security risks from terrorism in many areas of Algeria.⁶ Al-Qaida is the terrorist organization that presents the greatest threat to U.S. interests.⁷

Human rights abuses (limited judicial independence, discrimination against women, torture, arbitrary arrest and detention, restrictions on citizens' privacy rights, freedoms to assemble, associate, practice religion without interference, travel, emigrate and repatriate) persisted in practice in Algeria, but the situation had improved in some areas from 2005. The government was generally committed to protecting the welfare, rights, health, and education of children.⁸ The Algerian government espouses participatory democracy and free-market competition.⁹

Algerian diplomacy was instrumental in obtaining the release of U.S. hostages from Iran in 1980. In July 2001, the current Algerian president became the first Algerian president to visit the White House since 1985. A second meeting in November 2001, and the Algerian president's participation at the June 2004 G8 summit held in the U.S., are seen by the U.S. State Department as indicative of the growing relationship between the U.S. and Algeria. Since the September 11 terrorist attacks, contacts in key areas of mutual concern, including law enforcement and counter-terrorism cooperation, have intensified between the two countries. Algeria publicly condemned the terrorist attacks on the U.S. and has been strongly supportive of the international war against terrorism. The

³See the U.S. State Department's *Background Note: Algeria*, dated February 2007.

⁴See the State Department's *Country Reports on Terrorism*, Chapter 5, dated April 28, 2006.

⁵See the State Department's *Country Reports on Terrorism*, Chapter 2, dated April 30, 2007.

⁶See the State Department's *Travel Warning, Algeria*, dated March 22, 2007.

⁷See the *Annual Threat Assessment of the Director of National Intelligence*, dated February 27, 2007.

⁸See the State Department's *Country Report on Human Rights Practices-Algeria*, dated March 6, 2007.

⁹See *Background Note: Algeria*, *supra*.

U.S. and Algeria consult closely on key international and regional issues. Cooperation between the Algerian and U.S. militaries continues to grow.¹⁰

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). 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 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline B—Foreign Influence

*Foreign contacts and interests may be a security concern if the individual has divided loyalties, or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as to whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6). It is undisputed that Applicant has foreign connections that present a potential risk of divided loyalties. Applicant’s father and seven of his nine siblings are resident citizens of his native Algeria. The salient issue is whether these foreign contacts present a heightened risk (see ¶ 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion*). The nature and strength of the family ties, the country involved, and the occupations, activities, and/or associations of the foreign family members are all relevant in assessing whether there is a heightened risk.*

¹⁰*Id.*

Applicant speaks with his father by telephone about once per month. He has contact with his siblings only if they happen to be at his father's when he calls, except for his youngest sister who lives with their father. Applicant speaks with her usually when he calls the home. It is evident he feels some affection or familial bond to them. Applicant fought for the education of his younger sisters (*see* Ex. F), has sent his father money, and has visited his family members in Algeria. Applicant clearly desires to maintain close relations with his family members in Algeria, as he sought assurances from the Algerian Embassy when he turned in his expired passport that he would be granted a visa if he should want to travel to Algeria in the future. Yet the nature and extent of his contact with his relatives in Algeria are what one might reasonably expect of any immigrant with a parent or siblings living in a distant country.

As to whether his family members' positions or activities create a heightened risk, there is nothing about any of his siblings' occupations that suggests any military, security, or intelligence responsibilities. In his character reference letter, Applicant's close friend indicated that Applicant's sister the veterinarian is a university faculty member (Ex. F), but Applicant described her position as a veterinarian in a private clinic. It is unclear whether she currently has any affiliation with a public university in Algeria. Another sister works as a radiologist for a government-owned hospital. Her status as a well-educated female physician in a traditional culture may well raise her visibility, and she relies on the government for her pay. While Algerian and U.S. interests are not always compatible, the two countries enjoy generally friendly relations. As reported by the U.S. State Department, contacts in key areas of mutual concern, including law enforcement and counter-terrorism cooperation, have intensified between the two countries since September 11, 2001. Algeria publicly condemned the terrorist attacks on the U.S. and has been strongly supportive of the international war against terrorism. The U.S. and Algeria consult closely on key international and regional issues. Despite some concerns with the Algerian government restricting the exercise of some basic human rights by its citizens, the Algerian government is not likely to attempt to gain improper influence through Applicant's relatives (*see* ¶ 8(a) *the nature of the relationships with the foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*).

As for the risk of his relatives falling victim to terrorism by Algerian-based organizations such as the GSPC, which was recently accorded affiliate status by al-Qaida, such organizations are not likely to be allowed to operate with impunity in Algeria. Algeria is not a state sponsor of terrorism. To the contrary, Algerian government interests were the primary target of the GSPC's terrorist activity. Significantly, Algeria has made impressive gains against terrorist groups operating in the country in the past two years. The GSPC has lost public support in Algeria. Despite the upsurge of GSPC activity in late 2006, the U.S. State Department still considers the Algerian security and military services as capable of handling the prolonged effort against internal terrorist threats. Algeria is viewed as a reliable ally in the War on Terror. However, the risk of terrorism by rouge elements in Algeria was sufficiently high in March 2007 to warrant the State Department's travel warning. Under the circumstances, MC ¶ 8(a) does not apply.

Notwithstanding his bonds of affection and/or obligation to his father and siblings in Algeria, Applicant has persuaded me that he can be expected to resolve any conflicts of interest in favor of the U.S., where he has lived his entire adult life and established firm roots. In 1986, he married a U.S. native-born citizen. In 1990, he voluntarily acquired U.S. citizenship. Shortly thereafter, he and

his spouse purchased their current residence. They educated their two daughters, now ages 17 and 15, in the local public schools. As evidenced by the character references submitted on Applicant's behalf (Ex. B, C, E, F), Applicant has strong, longstanding friendships in his community, developed over years of shared school and soccer events. He is also personally involved as a youth soccer referee and as a participant in an adult soccer league. Applicant has dedicated 15 years of his career to the U.S. defense effort. All of his financial assets are in the U.S. Apart from renewal and limited use of his Algerian passport (*see* Guideline C), he has exercised the rights and enjoyed the benefits of U.S. citizenship. MC ¶ 8(b), *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest, applies.*

Guideline C—Foreign Preference

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. (AG ¶ 9). Applicant came to the U.S. at age 19, intending to return to his native Algeria after he completed his education. Yet in graduate school he became romantically involved with a U.S. native citizen. When faced with the choice of a future with her in the U.S. or his homeland, Applicant elected to remain in the U.S. He did not return to Algeria for about ten years as he did not want to be conscripted to serve in the Algerian military, which indicates a preference for the U.S. However, after becoming a naturalized U.S. citizen and acquiring a U.S. passport, Applicant renewed his Algerian passport in March 1998 for another five years and used it to enter and exit Algeria in November 1998 and twice in 2002. Applicant did not intend the use of the Algerian passport as an act in preference for Algeria. He testified he had heard anecdotally of others being denied access to a visa to enter Algeria, although he had never tried to obtain a visa to travel on his U.S. passport (Tr. 118-19). Irrespective of whether he used his Algerian passport because it had not been a problem in the past, he did not want to risk denial of a visa, or for convenience, his voluntary renewal of his Algerian passport in March 1998 and use of that passport in 1998 and 2002 constitute the exercise of a privilege of Algerian citizenship as a U.S. citizen. Such conduct raises security significant foreign preference concerns under AG ¶ 10 (a)(1), *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.*¹¹

On April 13, 2007, Applicant turned in his expired passport to the Algerian Embassy, and notified officials that was renouncing his citizenship. Mitigating condition ¶ 11(e), *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated, applies.* Any concerns that the DoD may have had of Applicant reapplying for that foreign passport have been amply addressed by the letter of April 27, 2007, from the Algerian Embassy confirming that Applicant had “definitively” returned his passport. Applicant is not likely to reapply for an Algerian passport where he has gone to the trouble of turning it in and requesting confirmation of its surrender. Notably absent from the Embassy's letter is any confirmation of Applicant's intent to renounce his Algerian citizenship, or that return of the passport was alone enough to effect a renunciation. Applicant testified he was led to understand that nothing more was required. Even if

¹¹As of the issuance of the SOR, Applicant's Algerian passport had expired.

he remains an Algerian citizen, he has complied with DoD requirements. His surrender of his expired foreign passport is consistent with his U.S. citizenship and telling of a preference for the U.S. Furthermore, a credible willingness to renounce foreign citizenship is mitigating, even if no official action has been taken. MC ¶ 11(b), *the individual has expressed a willingness to renounce dual citizenship*, applies.

Whole Person Analysis

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. (AG ¶ 2(a)). Applicant's voluntary exercise of Algerian citizenship after he had acquired U.S. citizenship would ordinarily raise very serious concern about whether he can be counted on to serve U.S. interests (¶ 2(a)(1), *the nature, extent, and seriousness of the conduct*). However, there is no indication that he understood that travel on his Algerian passport was inconsistent with his clearance and it was not intended as an act of foreign preference (¶ 2(a)(7), *the motivation for the conduct*), and he has demonstrated reform in complying with DoD requirements to surrender, destroy, or otherwise invalidate his Algerian passport (¶ 2(a)(6), *the presence or absence of rehabilitation and other pertinent behavioral changes*). He has significant ties to Algeria in the close bonds shared with his father and seven siblings, but these are overwhelmed by his strong ties to the U.S. established since he decided to make the U.S. his home in the mid-1980s (continuous residency, citizenship, financial assets, education, dedicated work for a defense contractor). He has shown he can be counted on to fulfill his fiduciary obligations to the United States, having handled classified information appropriately in the performance of his duties from 1992 to 2000 and from about March 2005 to December 2006.

FORMAL FINDINGS

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2. Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

DECISION

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

Elizabeth M. Matchinski
Administrative Judge