



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 07-09016
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant:, Personal Representative

June 17, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on April 17, 2006. On November 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign preference (Guideline C) and foreign influence (Guideline B). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on December 11, 2007. DOHA issued a notice of hearing on March 10, 2008, and the hearing was held on April 16, 2008. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility of security clearance access is granted.

At the hearing, the government submitted four exhibits (GE). Administrative Notice was taken of four documents generated by the United States (U.S.) Department of State regarding the government of Morocco and its relationship with the U.S., the government's human rights record, and the status of anti-government terrorist activity in the country. At the hearing, testimony was taken from Applicant and three witnesses. Following the hearing, Applicant submitted character exhibits, e.g., cash awards, performance awards, relating to his job performance. (AE C through AE E) DOHA received the transcript on April 24, 2008.

Findings of Fact

The SOR alleges in paragraph 1 that, based on a Moroccan identification card, Applicant has a preference for Morocco over the U.S. In paragraph 2, the SOR alleges Applicant's ties and travel to Morocco raise foreign influence concerns.

Applicant is 47 years old, married with two children, 14 and eight. He has been employed as a library assistant with a defense contractor since March 2005. He seeks a secret security clearance.

Born in Morocco in December 1962, Applicant received his Bachelors of Arts degree in May 1986, while working in Morocco as a librarian for the U.S. Peace Corps between 1981 and 1988. He met his future wife, an American citizen,¹ who was also working in the country as a Peace Corps volunteer.

In 1988, Applicant (26 years old) was awarded a very prestigious scholarship to attend a two-year Master's degree in information and library science in the U.S. He immigrated to the U.S. to begin the two-year program. After marrying his wife in the U.S. in March 1990, he successfully completed the graduate program in May 1990.

Between 1990 and 1993, Applicant pursued a sculpting career, then landed a position at a local business school. Following several positions at nonprofit organizations, and the birth of his first child in 1994, he began employment at a nonprofit occupational therapy organization in September 1995. Applicant received his American citizenship in October 1997, and a U.S. passport a month later. Applicant's second child was born in 2000. In April 2005, Applicant began working for his current employer as a library assistant.

Foreign Preference

The foreign preference allegation was included in the SOR based on Applicant's possession of an expired Moroccan National Identity Card (ID card) that was issued in 1993 (SOR 1.a.), with an expiration date in 2003. (GE 2) Applicant indicated during the hearing that when traveling to Morocco, he carried his ID card for the purposes of

¹ Applicant's wife was born in the U.S. in March 1958. After spending several years as a professor and administrator at a local university, she is devoting her efforts to raising their two children.

assisting the Moroccan immigration officials identify him, and to alert them about whether he had a criminal history. Applicant noted that simply reciting the ID number (without the card) was sufficient for the immigration officials to conduct their check. The last time he traveled to Morocco, he forgot his ID card, and the Morocco officials let him into the country anyway, because they recognized him.

Concerning Applicant's dual citizenship, Applicant believed he had renounced his Moroccan citizenship in October 1997 when he took the naturalization oath to become a U.S. citizen. (Tr. 87) He testified that he was willing to surrender his Moroccan passport (that expired in 1998), and also the ID card (that expired in 2003). (Tr. 88)

Also during his testimony about his willingness to renounce his Moroccan ID card and passport, Applicant described a third identification document he was familiar with, but never had possession of. He called the document a "civil status card" he believed every Moroccan citizen was required to carry. Applicant's wife² explained the status card grants foreign born children of native-born Moroccan fathers the option of being registered by their father as Moroccan, so they become eligible for free education through college. Applicant's wife advised that they he could have applied for the status card, and hence, the educational benefits, but declined. Applicant's wife compared the Moroccan ID card to a U.S. Social Security card that is used by the U.S. government for identification.

Following the hearing on April 21, 2008, Applicant advised his facility security officer (FSO) by letter (AE C2) that he was renouncing his citizenship. In support of his action, he was turning over his Moroccan passport and identity card. On April 22, 2008, the FSO declared by letter that Applicant had turned over the two documents to him for destruction. (AE C1)

Foreign Influence

Applicant's parents (SOR 2.a.) are resident citizens of Morocco. His mother was born in November 1938 and is 69 years old. She suffers from diabetes. She has devoted her time to raising her children. Applicant speaks to her weekly by telephone. He last visited her in September 2006. Applicant's father is 70 years old. He retired as an accountant after 40 years of service in the Morocco national security force in approximately 1998. Recently, he had open heart surgery. Applicant's father receives a pension from the Moroccan government which his mother will inherit on his death. Applicant sends no money to any member of his family in Morocco.

Applicant has five brothers and three sisters who are citizens of Morocco. Some have moved out of the country. Applicant's oldest brother is 52 years old and a resident citizen of Morocco. He is also a citizen of France, living with his wife. He is employed as a social worker. Applicant talks to him about once a month, and sees him every three

² She explained that her familiarity with the immigration documents came from her Peace Corps volunteer experience in Morocco, and the family's travel in and out of the country since then. (Tr. 142)

years. The next oldest brother, a resident citizen of Morocco, is 51. He is employed as a designer for an oil company, and a computer-aided map planner. Applicant talks to him once a year, and sees him during his trips to Morocco.

The next oldest brother is 50 years old, a resident citizen of Morocco, and works as an accountant in the same office at a municipal agency that collects the garbage. Applicant's oldest sister works there too. Applicant does not consider him close. They talk on the phone about once a year.

Applicant's next oldest brother after Applicant is his 45-year-old brother. He is in charge of the administrative tasks in managing a villa used by a former U.S. ambassador in a nearby country. Applicant's 44 year old brother is a resident citizen of Morocco. He is also a citizen of France, and is married with two children. He is an accounting professor in French Polynesia (Tahiti).

Applicant's oldest sister is 49 years old, and a resident citizen of Morocco. As noted earlier, she and her 50-year-old brother are employed by the same municipal agency that manages garbage collection. The next oldest sister, a resident citizen of Morocco, is 38 years old. She is a homemaker, and also operates a small boutique. His youngest sister, is a citizen of Morocco, but is a resident of the U.S., applying for permanent resident status. She is employed as an office manager for a doctor. Applicant communicates with his sisters about once a year.

Applicant has never had any connection with the Moroccan government or any other foreign government. Applicant has never worked or served for any foreign government. In his three trips to Morocco to see his family in 2003, 2006, and 2007, Applicant always used his U.S. passport.

Applicant's wife is aware that the family has property in Morocco, but does not know about inheritance expectancy, as she and Applicant have not discussed the subject. Applicant and his wife consider the net worth of their U.S. assets to be between one and one and a half million dollars. Applicant's U.S. retirement account is approximately \$12,000.00.

Character Evidence

The Chief Executive Office (CEO) of Applicant's employer testified that Applicant was hired in March 2005 because of his library and computer science background. The CEO has interfaced with Applicant regularly over a three-year period, and has found him to be an honest person that consistently delivers a quality product.

The director of digital library solutions has known Applicant for about three years, and is his supervisor. His performance evaluations reflect superior ratings anchored by a reliable job performance that has been rewarded by gift certificates and salary increases on a periodic basis. (AE E) According to the director, Applicant never

exhibited any preference for any country except the U.S. The director knows Applicant has a close relationship with his parents, and keeps in regular contact with them.

The digitization services director of Applicant's current employer has worked with Applicant on several projects. In demonstrating his professional expertise and appropriate handling of security matters, the director noted Applicant's successful completion of a sanitization project that protects sensitive information in the library system for one of the branches of the military.

Applicant's former colleague and supervisor between 1995 and 2005 provided a character statement extolling Applicant's expertise as an information librarian, and then as a systems manager for the entire occupational organization. In the supervisor's opinion, Applicant could be counted on to get the job done in a professional and timely manner. The supervisor admired Applicant's attention for security rules and management of sensitive documents.

Administrative Notice

1. Morocco, a moderate, stable, democratic country, was the first country to seek diplomatic relations with the U.S. in 1977, and enjoys continuing strong ties and good relations with this country.³

2. Before the terrorist bombings in Morocco in March and April 2007, the last time similar attacks occurred in the country was in 2003. While Moroccan authorities continue to break up groups seeking to attack western and Moroccan targets, the potential for terrorist violence remains high in the country.⁴ Significantly, the potential for some type of terrorist violence occurring in the U.S. must constantly be monitored despite the remarkable efforts of U.S. security personnel.

3. Morocco has made commendable advancements in the area of human rights, but problems remain such as arbitrary detention of citizens, and rare surveillance of foreign citizens by Moroccan security personnel.⁵ In the global war on terrorism, the U.S. government has taken similar types of action to keep our borders secure.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition

³ U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Morocco*, dated October 2007 ("Background Note"), at 5 - 8.

⁴ U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information on Morocco*, December 14, 2007 ("Country Specific Information on Morocco"), at 1.

⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices - 2006*, Introduction and Report on Morocco, dated March 6, 2007.

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2b. requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Foreign Preference (FP)

When an individual acts in a manner that shows preference for a foreign country over the U.S., then he may be prone to provide information or make decisions harmful to the U.S.

Foreign Influence (FI)

The security issues connected to foreign influence are familial ties, contacts, and/or proprietary/financial interests that could be used to generate a heightened risk of

forcing an applicant into a position of having to choose between the foreign entity and the U.S.

Analysis

Foreign Preference (FP)

9. *The Concern.* “When an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she is prone to provide information or make decisions that are harmful to the interests of the U.S.”

Applicant informed DOHA in September 2007 (GE 2) that he had a Moroccan ID card issued to him in 1993 with an expiration date of 2003. Possessing an ID card exposes Applicant to foreign preference FP disqualifying condition (DC) 10.a. (*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*) Applicant became a U.S. citizen in October 1997. Continuing to maintain a valid ID card after becoming a U.S. citizen, with or without a Moroccan passport, is equivalent to providing a benefit to Applicant that he was not entitled to after he became a U.S. citizen, and notwithstanding the assertion that the ID card was used for administrative purposes.⁶

The two mitigating conditions (MC) that are activated to resolve the FP guideline in Applicant’s favor are (1) FP MC 11.b. (*the individual has expressed a willingness to renounce dual citizenship*), and (2) FP MC 11.e. (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). Applicant’s credible statements of intention in the government exhibits and his testimony to renounce his Moroccan citizenship are entitled to some weight. Applicant’s documented actions under FP MC 11.e. in renouncing his Moroccan citizenship and turning over the ID card and his expired Moroccan passport for destruction justify a resolution of the FP guideline in Applicant’s favor.

Foreign Influence (FI)

6. *The Concern* “Foreign contacts and interests result in security concerns where those contacts and interests create divided loyalties, or may be manipulated or induced by a foreign entity that is harmful to U.S., or is vulnerable to pressure or coercion by any foreign entity. Decisions under this guideline should include the foreign country where the contact or financial interest is located, including, but not limited to whether the foreign government targets U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.”

⁶ There was also extended testimony regarding a “civil status” card. Applicant never accepted this potential benefit of preserving free Moroccan education for his children, and therefore, there was no indication of foreign preference.

The government has established a preliminary basis for denying Applicant's security clearance application. His mother and father are resident citizens of Morocco. Three of his five brothers are resident citizens of Morocco. The other two are citizens of Morocco but residents of other countries. One is a resident citizen of France, and the other is citizen of Tahiti. Two sisters are resident citizens of Morocco, and one is citizen of Morocco, but is living in the U.S. and applying for permanent resident status. Foreign Influence (FI) DC 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) applies.

FI DC 7.b. (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*) applies. The fact that Applicants family members are still citizens of Morocco constitutes a potential for conflict that shifts the burden to Applicant to show why he will resolve the conflict in favor of the U.S.

In deciding the weight if any to be assigned to the mitigating conditions under the FI guideline, it is important to note that FI guideline is not just limited to countries hostile to the U.S. Friendly nations have targeted U.S. citizens for sensitive information, especially in economic, scientific, and technical fields. See, ISCR Case No. 00-0317, 2002 at 15-16 (App. Bd. Mar. 29, 2002) Also, when assessing an applicant's family ties to a foreign country, the totality of the family contacts must be considered rather than each contact by itself. ISCR Case No. 01-22693 at 7 (Ap. Bd. Sep. 22, 2003)

Three of the six mitigating conditions (MC) under the FI guideline may apply to the facts and circumstances of this case:

FC MC 8.a. (*the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.*);

FI 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 minimal, or the individual has such deep and long lasting 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*);

FI MC 8.c. (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*).

Applicant's mother was never an agent or employee of the Moroccan government. She has successfully raised nine children. Applicant's father worked for the Moroccan security force for about 40 years. While the DOHA Appeal board has held that an employee of a foreign government need not be employed in a position involving intelligence or other national security duties to be an agent (ISCR Case No. 02-29254 at 5-6 (App. Bd. Jun. 29, 2004)), Applicant's father was an accountant, and 10 years removed from the position by retirement. There is no evidence in the record that indicates the father, or any other listed family member employed in a government capacity, was or is an agent of the Moroccan or any other government.

Applicant's oldest brother is 53 years old. He is also a French citizen and employed as a social worker. The record is silent as to whether he works for a public entity or a private entity. The second oldest brother is 50 years old and supervises a garbage collection service for a municipality. Applicant's oldest sister is an accountant for the same municipal agency. I seriously doubt whether either sibling serve in a clandestine position. The third oldest brother is employed by an oil drilling company as a map designer. The fourth oldest brother after Applicant is the 43-year old who is a professor at a high school in Tahiti. The last brother manages a villa for a former ambassador to Saudi Arabia. The record reflects this brother ensures all support services for the villa are handled in an efficient manner. There is no evidence that he is a part of any activity outside those described by Applicant and his wife.

The second oldest sister is 38 years old and operates a boutique that specializes in children's clothing. Applicant's youngest sister is living in the U.S., and is applying for her U.S. permanent resident card. Considering the geopolitical nature of the government of Morocco, the positions of those persons in the country, it is unlikely that Applicant will be placed in a position of having to choose between the interests of the foreign entity and the U.S. In sum, Applicant receives some mitigation under FI MC 7.a. with respect subparagraph 2.a. and 2.b.

Having weighed the entire record, I believe Applicant's sense of loyalty to the U.S., including his family and his job, outweighs his relationships with his parents and siblings who are residents and/or citizens of Morocco and other foreign countries. The character witness testimony and statements of the CEO, and his current and former supervisors indicate he will resolve any conflict in favor of the interests of the U.S., and consistent with FI MC 8.b. SOR 2.a. and 2.b. are found in Applicant's favor.

FI MC 8.c. is inapplicable to this case. Applicant's contacts with his parents and siblings are more than casual and not infrequent.

Whole Person Concept (WPC)

My finding for Applicant under the FI guideline must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the

Paragraph 2 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge