



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-04535
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire
Jillian L. Oportus, Esquire

July 13, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on July 2, 2007. On July 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was taken under 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 21, 2008. He answered the SOR in writing on July 30, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on August 4, 2008. This case was originally assigned to another judge on April 29, 2009, but reassigned to the undersigned on May

1, 2009. DOHA issued a notice of hearing on May 6, 2009, and I convened the hearing as scheduled on May 27, 2009. The Government offered, by way of stipulation, Exhibits (GXs) 1 through 3, which were received into evidence. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through L, without objection. DOHA received the transcript of the hearing (TR) on June 2, 2009. The record closed on May 27, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Algeria. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the underlying facts of all of the allegations of SOR, with explanations.

Guideline C - Foreign Preference

The Applicant was born in Algeria, but first came to the U.S. at 20 years of age, to attend college, in 1976 (TR at page 24 line 8 to page 25 line 19, at page 35 line 23 to page 38 line 10, and GX 1 at page 12). After graduation in 1980, he returned to Algeria (*Id*). However, in 1983, he returned to the U.S. to attend graduate school (TR at page 35 line 23 to page 38 line 10, and GX 1 at page 11). He, soon thereafter, married his first wife, who was a citizen of the U.S. (TR at page 35 line 23 to page 38 line 10).

The Applicant became a U.S. citizen in January of 1992 (*Id*, and GX 1 at page 7). In 1995, he was remarried to a naturalized U.S. citizen, who was also born in Algeria (GX 1 at page 16~17). She is a part-time school teacher in the U.S. (TR at page 24 line 8 to page 25 line 19). They have two children, ages 12 and 7, who were born in the U.S. (TR at page 33 lines 20~24). He owns a home in the U.S., earns about \$115,000 a year, and has no potential inheritance in Algeria (TR at page 24 line 8 to page 25 line 19, at page 33 lines 4~7, and at page 47 lines 15~19).

1.a.~1.e. Although the Applicant does not consider himself a dual national with Algeria, he did exercise dual nationality by keeping and later renewing his Algerian passport, in 2007 (TR at page 32 line 21 to page 33 line 3). He last used his Algerian passport to enter and exit Algeria in 2005 (TR at page 26 line 20 to page 27 line 4). However, in April of 2009, the Applicant destroyed his Algerian passport in the presence of his Facility Security Officer (FSO) (TR at page 25 line 22 to page 26 line 19). This is evidenced by a letter from his FSO (AppX F). The Applicant has also expressed a

willingness to renounce any Algerian citizenship he may have (TR at page 40 line 11~13).

Guideline B - Foreign Influence

2.a. The Applicant's parents are deceased, but he has four sisters and four brothers who are citizens of and reside in Algeria (TR at page 27 line 5 to page 32 line 14). None of these siblings have any connection with the Algerian government (*Id*). The Applicant has a "very indifferent relationship" with his siblings, and has had virtually no contact with them since 2005 (TR at page 27 line 5 to page 32 line 14, and at page 42 line 6 to page 43 line 12). None of these siblings works for the Algerian government (*Id*).

2.b. The Applicant's father-in-law and sister-in-law are also citizens of and reside in Algeria (TR at page 43 line 13 to page 44 line 16, and at page 45 line 16 to page 46 line 10). Neither in-law has any connection with the Algerian government, and he has little contact with either his father-in-law or sister-in-law (*Id*).

The Applicant would not be subject to coercion vis-a-vis any of his Algerian relatives (TR at page 33 lines 14 to 19).

I also take administrative notice of the following facts. Algeria is a multi-party constitutional republic that has suffered from domestic terrorism throughout the 1990s to the present. Although the U.S. seeks to support the recent democratic efforts in Algeria, the U.S. Government has become increasingly concerned with the changing nature of terrorism in Algeria and its global efforts. The U.S. has worked with Algeria to help combat terrorism in that country, but its government projects inconsistent policies regarding its position on international terrorism, often in conflict with the U.S.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition 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 not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 ¶ 2(b) 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 transcends normal duty hours and endures throughout off-duty hours. 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.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C - Foreign Preference

Paragraph 9 of the new adjudicative guidelines sets out the security concern relating to 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.”

Subparagraph 10(a)(1) is applicable: “*exercise of any right, privilege or obligation of a 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.*” Here, the Applicant, a naturalized citizen, used an Algerian passport to enter that country in 2005. This is clearly countered, however, by the mitigating conditions found under Subparagraphs 11(b) and 11(e). Subparagraph 11(b) notes that where “*the individual has expressed a willingness to renounce dual citizenship,*” this is

mitigating. I find that Applicant's renunciation intention to be genuine. Furthermore, under Subparagraph 11(e), the Applicant's "passport has been destroyed [in the presence of] . . . the cognizant security authority," his FSO.

Guideline B - Foreign Influence

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence: "Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by a foreign interest."

Here, Paragraph 7(a) is applicable: "*contacts with a foreign family member . . . 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 Applicant's eight siblings, and father-in-law and sister-in-law are citizens of and reside in the Algeria. This is clearly countered, however, by the first mitigating condition, as "*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.*" The Applicant has had little contact with his Algerian based relatives since 2005. His Algerian relatives have no connection with the Algerian government, and the Applicant can not be coerced by the Algerian government vis-a-vis these relatives.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Applicant has the unqualified support of those who know and have worked with him (AppXs B~D and L). Of particular note are the comments of his Director, who avers, in part, the following:

[The Applicant] . . . has shown himself to me to be an honorable, dependable person whom I have depended upon. His actions have

always been honest and straightforward. He values his family and participates in their activities within the community. He has frequently expressed his appreciation for the values of the United States. He desires to raise his family as Americans (AppX B).

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Preference and Foreign Influence.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge