



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



In the matter of:)
)
-----) ISCR Case No. 08-06631
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

April 24, 2009

Decision

HARVEY, Mark W., Administrative Judge:

Applicant currently retains a valid Tunisian passport. He is close to his mother and she continues to live in Tunisia. He owns property in Tunisia. He went to Tunisia at least four times in the last three years. Applicant failed to mitigate foreign preference and foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 13, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (Government Exhibit (GE) 4). On December 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines

(AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges security concerns under Guideline C (Foreign Preference) and B (Foreign Influence). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 15, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (GE 3). A complete copy of the file of relevant material (FORM), dated February 27, 2009, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.¹ On April 2, 2009, Applicant provided a response to the FORM. The case was assigned to me on April 22, 2009.

Procedural Rulings

Administrative Notice

Department Counsel asked me to take administrative notice concerning materials related to Tunisia (FORM at 3). Department Counsel offered supporting documents to show detail and context for those facts in the administrative notice request (Ex. I to III—listed in FORM at 6).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Applicant did not object to Department Counsel's request for administrative notice. Department Counsel's request for administrative notice is granted with respect to the facts in the section labeled "Tunisia" on page five of this decision.

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated March 5, 2009; and Applicant's receipt is dated March 9, 2009. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

SOR Amendments

Department Counsel moved to amend the SOR by changing the letter designating the pertinent Adjudicative Guideline citation in paragraph 1 from “B” to “C,” and to transfer the allegation currently in SOR ¶ 2.e (stating, “As of November 5, 2007, you plan to start contributing to the Tunisia system that is similar to the United States Social Security System.”) from underneath the Foreign Influence Guideline to underneath the Foreign Preference Guideline and re-designating it SOR ¶ 1.e (FORM at 10). Applicant did not object to Department Counsel’s proposed SOR amendments, and they are granted. I changed and initialed and dated the changes on the SOR (GE 1).

Findings of Fact²

In his response to the SOR, Applicant admitted all of the SOR allegations and provided some explanations. He discussed the reasons why he believes he should have access to classified information. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant was born in Tunisia in 1974.³ He attended college in Tunisia from 1994 to 1997, and earned a Bachelor of Science degree. He attended a university in Saudi Arabia from 1997 to 1998, and then transferred to a U.S. university, which he attended from 1999 to 2000. He earned a Master of Science degree in 2000. He attended another U.S. university from 2003 to 2007, and earned a Ph.D. in 2007.

Applicant became a U.S. citizen on September 15, 2004. He received a U.S. passport on September 24, 2004. From August 2007 to the present, he has been employed by a government contractor. He has never married. He has never served in the U.S. military. He has never been charged with any felony, any firearms or explosives offense, or any offense related to alcohol or drugs. He has not been arrested or charged with any minor or misdemeanor-type offenses in the last seven years. He has not used any illegal drugs in the last seven years. He has not had any debts delinquent over 180 days, petitioned for bankruptcy, unpaid judgments, or unpaid liens in the last seven years.

²Some details have not been included in order to protect Applicant’s right to privacy. Specific information is available in the cited exhibits.

³Applicant’s 2007 SF 86 (GE 5) is the source for the facts in this paragraph and the next paragraph.

Foreign Influence and Foreign Preference⁴

Applicant admits dual citizenship with the United States and Tunisia (SOR ¶ 1.a; GE 3 at 3; GE 4 at 8, 25; GE 5 at 7). Applicant's Tunisian passport was issued on January 7, 2005, and it will not expire until January 6, 2010 (SOR ¶ 1.b; GE 3 at 3; GE 4 at 25; GE 5 at 8, 20). Applicant used his Tunisian passport to enter and exit Tunisia in 2005, 2006, and 2007 (SOR ¶ 2.c; GE 3 at 4; GE 4 at 24-25; GE 5 at 8). He continues to retain his currently valid Tunisian passport (SOR ¶ 1.d; GE 3 at 3; GE 4 at 26; GE 5 at 8, 32, 33), even though he has had a U.S. passport since 2004 (SOR ¶ 1.c; GE 3 at 3; GE 4 at 7, 8, 25; GE 5 at 20).

Applicant's mother is a citizen of Tunisia and she lives in Tunisia (SOR ¶ 2.a; GE 4 at 23-24). His father is deceased (GE 4 at 22). Two of his brothers and one sister are citizens of Tunisia and live in Tunisia (SOR ¶ 2.b; GE 4 at 23-24; GE 5 at 8). Applicant's FORM response emphasized the close relationship he has with his mother, and how grateful he is to his parents for raising him and nurturing him through his formative years.

Applicant went to Tunisia in May 2005, December 2006, July 2006, and July 2007 to visit his family (SOR ¶ 2.c; GE 3 at 4; GE 4 at 24-25; GE 5 at 7). He may have traveled to Tunisia after July 2007 to visit his family (SOR ¶ 2.c). For the 2005 and December 2006 visits to Tunisia he stayed for approximately a month, and for the July 2006 visit to Tunisia, he stayed about three weeks (GE 5 at 7). Applicant owns two homes in Tunisia (one was inherited from his father), and he may at some point start contributing to the Tunisian pension system, which is equivalent to the United States' Social Security system (SOR ¶¶ 1.e and 2.d; GE 3 at 4; GE 4 at 25; GE 5 at 7-8).

On September 24, 2008, Applicant discussed the issue of renunciation of his Tunisian citizenship and relinquishment of his Tunisian passport as follows:

[I]t is a hard decision to make, especially [because] it involves my country of origin, the country where I grew up, where my mother lives, where my family resides, where I was initiated to [my] education, [and] where I have good memories. I did mention [to the Office of Personnel Management investigator] that I did not make that decision yet and I would need to think about it [some] more. . . . Giving up my Tunisian citizenship is as hard as giving up my US citizenship, the citizenship of the country that embraced me, provided me with the opportunity to pursue higher education, the country that taught me good values and morals, the country that provided me with the opportunity to work for such big companies and with high caliber people, the country that taught me how to be optimistic and hope for [a] better future, and the country that made me who I am. I was really glad that I had the option to keep both citizenships and never had to give up either one. . . . Now, in [regard to] giving up my Tunisian

⁴Applicant's FORM response admitted the facts in SOR ¶¶ 2.a to 2.d. He also indicated he has not yet contributed to the Tunisian equivalent of the U.S. Social Security System (SOR ¶ 1.e).

passport [if that] would result in me being deprived [of] my Tunisian citizenship, then I fall under the previous question regarding giving up my citizenship, which I already answered, otherwise (giving up my Tunisian passport would NOT result in me being deprived from my Tunisian citizenship), I do not mind giving it up and I just need to check the details of how I can enter Tunisia's soil without [a] Tunisian passport.

(Emphasis in original) GE 5 at 5. When Applicant responded to the FORM, on April 2, 2009, he elaborated on his desire to retain his Tunisian passport:

The concern expressed in this section has to do with the fact that I am (retaining) a Tunisian passport. As I mentioned in my response to the statement of reasons, the ONE and ONLY time I need and use my Tunisian passport is when entering and exiting the Tunisian soil. This is confirmed in the Department of State Counselor Information sheet that Mr. L[] presented, which says, "American citizens of Tunisian origin are expected to enter and exit Tunisia on their Tunisian passports. If a Tunisian American succeeds in entering using a US passport, he or she will still have to present a Tunisian passport to exit the country."

Tunisia

Tunisia is a republic with a president and a single political party. The diplomatic and military relationship between the United States and Tunisia has long been one of trust and mutual support, especially on curbing terrorism and crime. However, Tunisian government officials and security forces have occasionally violated the rights of political prisoners, and committed other human rights violations. Security forces aggressively monitor and question those suspected of threatening Tunisian security. The relationship between Tunisia and the United States briefly suffered when Israel acted aggressively against terrorists in the 1980s and when the United States was engaged in the First Gulf war in 1990. The Department of State notes that Tunisia has "open borders with Libya and Algeria" and lists kidnapping of tourists in the last 5-6 years as a concern. The current relationship between the United States and Tunisia is described as positive and warm.

Applicant's FORM response emphasizes that the Tunisian government is a close and stalwart friend of the United States. Applicant and his family have never had a problem with the Tunisian government. There is no evidence that the Tunisian government is concerned with Applicant or Applicant's family. The relationship between Applicant and the Tunisian government is one of mutual respect.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s 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), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. 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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein 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. 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 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guidelines C (Foreign Preference) and B (Foreign Influence).

Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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 ¶ 10(a)(1) describes conditions that could raise a security concern and may be disqualifying. These conditions state, “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. This includes but is not limited to: (1) possession of a current foreign passport.”

In 2005, Applicant applied for and was issued a Tunisian passport after becoming a U.S. citizen, even though he already had a currently valid U.S. passport. He used the Tunisian passport to enter and exit Tunisia. He continues to possess a currently valid Tunisian passport that will continue to be valid until January 2010, establishing AG ¶ 10(a)(1). “Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-00852 at 3 (App. Bd. May 27, 2008) (citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990)). Because the government has raised foreign preference security concerns, the burden now shifts to Applicant to establish any appropriate mitigating conditions. Directive ¶ E3.1.15.

AG ¶ 11 provides conditions that could mitigate security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

Security officials did not authorize Applicant's possession or use of a Tunisian passport, and he did not invalidate or relinquish his Tunisian passport as described in AG ¶¶ 11(d) and 11(e). His Tunisian passport was not surrendered to his security officer. He obtained and used the Tunisian passport after he became a U.S. citizen. If he had surrendered his Tunisian passport to his Facility Security Officer, I would have mitigated foreign preference security concerns under AG ¶ 11(e); however, because he did not do so, this security concern is not mitigated.

SOR ¶ 1.c is mitigated because SOR ¶ 1.c essentially duplicates SOR ¶ 1.b, except Applicant's possession of a valid U.S. passport and U.S. citizenship are added to SOR ¶ 1.c. Actually, his U.S. passport and U.S. citizenship tend to mitigate foreign preference concerns, and these connections to the United States do not weigh against Applicant's worthiness to have access to classified information. Thus, I find "For Applicant" on page 13 of his decision.

SOR ¶ 1.e is mitigated because Applicant did not invest in the Tunisian equivalent to the U.S. Social Security System.

None of the mitigating conditions fully apply and foreign preference security concerns remain because of Applicant's continued possession of a currently valid Tunisian passport, despite having ample opportunity to mitigate this concern.

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 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 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 ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's mother, two brothers and one sister, are citizens and residents of Tunisia. Applicant visited his mother and possibly his Tunisian siblings in 2005, 2006 and 2007. The record does not indicate how often he communicates with his family living in Tunisia. There is no evidence that his relatives have connections to the Tunisian government or military. There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members. See ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002).

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. Tunisia's cordial relationship to the United States, Tunisia's opposition to terrorists, and the absence of any record that Tunisia uses espionage to target the United States, place a relatively low burden of persuasion on Applicant to demonstrate that his relationships with family members living in Tunisia do not pose a security risk and he is not in a position to be forced to choose between loyalty to the United States and his family living in Tunisia.

On the other hand, human rights organizations have criticized the Tunisian government's failure to adhere to human rights standards, and it is conceivable that Tunisian officials theoretically might target any Tunisian citizen or former Tunisian citizen living in Tunisia or the United States in an attempt to gather valuable information

from the United States, should the relationship between Tunisia and the United States deteriorate, as it has several times in the past.

Applicant's connections to his mother, but not his siblings, living in Tunisia create a potential conflict of interest because his relationship with his mother is sufficiently close to raise a possible security concern about his desire to help his mother, who is living in Tunisia by providing classified, sensitive or protected information. There is insufficient record information about his relationships with his siblings living in Tunisia to determine there is a foreign influence security concern.

Applicant owns two houses in Tunisia. These properties are sufficiently substantial to subject Applicant to a heightened risk of foreign influence or exploitation. Even after being advised of the security concern raised by ownership of these properties, he did not describe any action to divest himself of these properties.

The government produced substantial evidence of Applicant's relationships and contacts with his mother living in Tunisia to raise the issue of potential foreign pressure or attempted exploitation. There is some evidence that the Tunisian government might commit human rights violations, and Applicant's mother living in Tunisia is available should Tunisian officials seek to exploit her to obtain classified, sensitive or protected information. AG ¶¶ 7(a), 7(b) and 7(e) apply, requiring further review and analysis.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(a) the nature of the relationships with 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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) cannot be applied with respect to his mother living in Tunisia. Applicant has a strong emotional bond with his mother living in Tunisia. Applicant emphasizes his close relationship with her in his FORM response, and this close relationship is sufficient to negate these mitigating conditions. Additionally, he was reluctant to surrender his Tunisian passport because he wanted it to be available should he need to go to visit his family living in Tunisia. Although Applicant's close relationships with his mother living in Tunisia is an important positive reflection of his character, this same close relationship raises security concerns for possible foreign influence.

There is no evidence that Applicant's family members living in Tunisia have been political activists or that they have high profile jobs with the Tunisian government, the military or any news media. There is no evidence that terrorists, criminals or the Tunisian government have approached or threatened Applicant's family members living in Tunisia for any reason. There is no evidence that his family members living in Tunisia currently engage in activities which would bring attention to them or that the Tunisian security forces, terrorists or other anti-U.S. elements are even aware of Applicant's relationship with those family members. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation.

Applicant's relationships with his relatives in Tunisia, his frequent contacts with his mother, and the potential that the Tunisian government might violate his mother's human rights should the relationship between the United States and the Tunisian government change and become hostile, all weigh against mitigating security concerns. See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

Applicant's connections to the United States have developed over the last 10 years. Because they are more recent, they tend to be more important than his connections over more than 25 years to Tunisia. His U.S. connections tend to mitigate foreign interest security concerns. He has many friends and colleagues in the United States. He is a loyal, dedicated U.S. citizen. He swore an oath of allegiance to the United States when he became a U.S. citizen. He has a Ph.D. and is likely to make significant contributions to national security and his company in the future. All these circumstances provide some support for a conclusion that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group at

coercion or exploitation. I conclude AG ¶ 8(b) is partially established and tends to partially, but not fully, mitigate foreign influence security concerns. There is sufficient lingering foreign influence security concern to find “Against Applicant” in the Formal Findings of this decision on page 13.

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) the 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.

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. AG ¶ 2(c). I hereby incorporate all of my comments under the preceding discussions of the four pertinent adjudicative guidelines into this section.

There is some evidence tending to mitigate security concerns under the whole person concept. He has somewhat greater connections to the United States than to Tunisia. He moved to the United States ten years ago, and he became a U.S. citizen in 2004. He swore an oath of allegiance to the United States. His dedication to his work and to the United States is a very positive indication of his good character and trustworthiness. He is loyal to the United States. Applicant’s record of good employment, the absence of derogatory information concerning financial problems and substance abuse and his law-abiding character weigh in his favor. There is no evidence of any security violation, or criminal activity.

The mitigating evidence under the whole person concept and the adjudicative guidelines is not sufficient to warrant access to classified information. The foreign preference security concern is substantial. After becoming a U.S. citizen, Applicant obtained a Tunisian passport. He used his Tunisian passport for his 2005 and 2006 visits to Tunisia. He did not relinquish or surrender his Tunisian passport to his facility security official (FSO). He has two properties in Tunisia. He was informed of the security concerns raised by the Tunisian properties and he did not relinquish his interest in them. He has a very close relationship with his mother. Tunisian government officials might violate her human rights to put pressure on her to obtain classified, protected or

sensitive information. Terrorists might enter Tunisia and put pressure on his mother to obtain such information.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the foreign preference and foreign influence security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark W. Harvey
Administrative Judge