



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



In the matter of:)
)
) ISCR Case No. 09-05948
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Steven Goldberg, Esq.

March 23, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has mitigated the Foreign Influence and Foreign Preference security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C, Foreign Preference and B, Foreign Influence. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on September 23, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 22, 2010. DOHA issued a notice of hearing on November 8, 2010, and the hearing was convened

as scheduled on December 14, 2010. The Government offered Exhibits (GEs) 1 through 4, which were admitted without objection. The Government also offered country information for administrative notice, marked GE 5. The Applicant offered Exhibit (AEs) A through D, a trial brief marked AE I, and testified. The record was held open for Applicant to submit additional information. Applicant submitted four post-hearing exhibits between December 23, 2010 and January 14, 2011, marked AE E through H, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 2010.

Findings of Fact

In the SOR, DOHA alleges under Guideline C, Foreign Preference that Applicant exercises Tunisian citizenship by possessing a valid Tunisian passport (SOR 1.a.); that she used her Tunisian passport for travel after she was issued a U.S. passport in June 2001 (SOR 1.b.); that she has exercised dual citizenship with France by possessing a valid French passport (SOR 1.c.1.) and by voting in French elections (SOR 1.c.2.); and that she has used her French passport for international travel (SOR 1.d.). DOHA alleges under Guideline B, Foreign Influence, that Applicant parents, brother, and sister are all dual citizens of France and Tunisia and reside in France (SOR 2.a. and 2.b.); that Applicant's mother's cousin is a General in the Tunisian military (SOR 2.c.); that Applicant possesses the inheritance rights for her family's properties in France and Tunisia (SOR 2.d); that she traveled to Tunisia in 2004, 2006, and 2008 (SOR 2.e.); and that she traveled to France in 2004, 2005, 2007, 2008, and 2009 (SOR 2.f). Applicant admitted to all of the subparagraphs as stated in the SOR, with the exception of 1.c.2, which she denied. After considering the evidence of record, I make the following findings of fact.

Applicant is a 41 year old employee of a government contractor. She began working for the government contractor in 1997 and worked for the company for 12 years. In 2008, she left the company to work for a solar energy start-up firm, but returned to the same government contractor in 2009. (Tr. 22, 31-32.)

Applicant was born in France to Tunisian parents. She was raised in France, and visited Tunisia as a child. She attended an engineering school in Paris. While she attended school, she completed two internships in the U.S. In 1995, she moved to the U.S. She became a U.S. citizen on May 25, 2001. Prior to becoming a U.S. citizen, Applicant voted in French elections, but she has not voted in a French election since becoming a U.S. citizen. In March 2002, she earned two master's degrees from a U.S. school. She was married to a U.S. citizen from 1996 to 2004. She has a daughter, age 7, who was born in the U.S. and is a citizen of the U.S. and France. Applicant's daughter possesses a French passport, in addition to her U.S. passport. Applicant is actively involved in her daughter's life, taking her to lessons and participating in the parent teacher association at her school. (GE 1; Tr. 23-30, 34, 36, 66.)

Applicant's mother, father, brother, and sister, are all dual citizens of France and Tunisia, residing in France. Applicant's parents are retired and live the majority of the time near Paris, France, where they own an apartment. The also own an apartment and

a beach house in Tunisia, and visit Tunisia frequently. Applicant's brother works as consultant for a bank. Her sister has a business degree and is currently seeking employment. Applicant loves her parents and siblings. She keeps in close contact with them, calling them all on a weekly basis and e-mailing weekly, if not more frequently. She visits her family in France approximately twice annually. She usually visits France at Christmas time and in the summer. In summer, she visits her family in France and then travels to her family's beach house in Tunisia. She testified she visited both France and Tunisia on a yearly basis since the early 2000s. Her last trip to France and Tunisia occurred in July or August 2010. (Tr. 34-36, 42-43, 55-59, 75.)

Applicant owns no property in France or Tunisia. She does not have any banking accounts outside of the U.S. While her parents own property in France and Tunisia, outlined above, she is unsure of her inheritance rights to the properties and has never seen her parents' wills. She estimates that her parents' properties in Tunisia are valued at less than \$200,000. (Tr. 39-41, 60.)

Applicant learned from her mother this past September that her mother's cousin is a General in the Tunisian military. Applicant knows little of this distant relative. She did attend his wedding in Tunisia in July or August 2010, but has not had contact with him since departing Tunisia. She does not communicate with him when she is in the U.S., but has seen him on occasion when she is in Tunisia. (Tr. 38-39.)

At the time of the hearing, Applicant possessed three valid passports: a U.S. passport, a Tunisian passport, and a French passport. Applicant's U.S. passport was issued in June 2001. Applicant's Tunisian passport was issued in 2008. She obtained it because she had experienced difficulties departing Tunisia. Applicant's French passport was issued March 12, 2001 and expired March 11, 2011. Her French passport was valid at the close of the record. At hearing, Applicant explained that she used her French passport when she entered France and Tunisia. She used her Tunisian passport to exit Tunisia. She feels safer traveling on her French and Tunisian passports when overseas because they allow her to keep a low profile. She uses her U.S. passport to enter the U.S., upon return to the States. She indicated that she was unwilling to renounce her French and Tunisian citizenship and she intended to retain her French and Tunisian passports because she could not rule out the possibility that she would someday want to move to France or Tunisia. However, on January 14, 2011, Applicant surrendered her French and Tunisian passports to her Facility Security Officer. (Tr. 36-38, 46-49, 61-65, 69-71, 77; AE F; AE G; AE H.)

Applicant testified that she is loyal to the United States and "love[s] it here." As a little girl, she wanted to move to the U.S. and she took advantage of internship opportunities in the U.S. during her undergraduate education, as noted above. She moved to the U.S. in her mid-20s. She believes her roots are in the U.S. She is close to a cousin and her month-in-law, both of whom live with in the same county as Applicant. She admits some lingering loyalties to both France and Tunisia, but indicated she favored the U.S. (Tr. 43, 53, 61-63.)

Applicant denies that she would ever violate the obligations of a security clearance. She testified:

I believe I can be trusted. I've worked for the company for 13 years. I just feel like they are my family. I know the people very well. I just feel very comfortable in the company. I have a sense of duty to the company and to this country . . . I'm sure I can be trusted with those secrets. (Tr. 52-53.)

Applicant also has the faith and trust of her former department manager, immediate supervisor, colleagues, and friends. Her supervisor noted that "she is both a trustworthy and loyal employee and citizen of the United States." Her former department manager indicated that Applicant "conducts herself with a very high degree of professionalism and dignity and is a valuable member of the [company's] team . . ." Further, her performance evaluations indicate Applicant is "honest, forthright and trustworthy." (AE A; AE B; AE C; AE D; AE E.)

Concerning facts presented by Department Counsel for administrative notice, Tunisia is a republic with a strong presidential system. It has good relations with the West, including the United States. However, the U.S. Department of State warns of Tunisia's open borders with Libya and Algeria, because of the terrorist presence in those countries. In 2002 and 2003 a number of tourists that crossed from Tunisia to Algeria were kidnapped. Further, the December 2007 sentencing of 30 Tunisian individuals for terrorist-related activity has potentially encouraged anti-Western sentiments. (GE 5.)

The administrative notice documents confirm Applicant's testimony about the requirement to enter and leave Tunisia on a Tunisian passport. It notes that "if a Tunisian-American succeeds on entering using a U.S. passport, he or she will still have to present a Tunisian passport to exit the country." (GE 5.)

Citizens of Tunisia are limited in political freedoms. Rights such as freedom of association, freedom of speech, and freedom of the press are limited. There are also human rights violations reported, including torture and extended pretrial detentions. (GE 5.)

Additionally, I am taking notice of the political and social unrest in Tunisia that led to Tunisia's 23-year president stepping down from power. Demonstrations have degenerated on several occasions into violent clashes between police and protesters, resulting in deaths, injuries, and extensive property damage. A travel alert, issued by the U.S. Department of State is still in effect. It warns U.S. citizens to defer non-essential travel to the central, western, and southern regions of Tunisia. It also notes the situation has stabilized in the coastal touristic zone.¹

¹ Embassy of the United States Travel Alert-Tunisia, March 10, 2011.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

(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;
- (7) voting in a foreign election; and

(d) Any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant has been a citizen of Tunisia and France from birth. She was raised in France and influenced by French culture. She has possessed both French and Tunisian passports since her childhood. In 1995, she chose to immigrate to the U.S. and became a U.S. citizen in 2001. Prior to becoming a U.S. citizen, she voted in French elections. Because her participation in the French elections occurred prior to Applicant becoming a U.S. citizen, no concern is raised under AG ¶ 10(a)(7). However, her possession of foreign passports raises concerns under AG ¶ 10(a)(1). Moreover, her unwillingness to renounce her Tunisian and French citizenships indicates she potentially has allegiance to a country other than the United States. AG ¶ 10(d) is also disqualifying.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11. The following potentially applicable mitigating conditions have been considered:

- (a) dual citizenship is based solely on parent's 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; and

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

Mitigating condition AG ¶ 11(a) and 11(c) have only limited applicability. Applicant's citizenships in France and Tunisia are the result of her birth to Tunisian parents in France. Therefore, AG ¶ 11(a) applies, regardless of her choice to exercise her dual citizenship by using her non-U.S. passports. However, evidence indicative of Applicant's Foreign Preference may still be considered, despite the applicability of this mitigating condition. The Appeal Board has noted that the presence or absence of any given Adjudicative Guideline disqualifying or mitigating condition is not solely dispositive of a case.² Further, the applicability of AG ¶ 11(a) "does not render irrelevant any other record evidence that might be indicative of a foreign preference under Guideline C."³ Applicant has exercised both her French and Tunisian citizenships by using her foreign passports, after becoming a U.S. citizen, making AG ¶ 11(c) inapplicable. Further, the inquiry about Applicant's Foreign Preference must extend beyond whether she acquired her French and Tunisian citizenship and look at how she has demonstrated a preference for France and/or Tunisia through the use of her foreign passports.

Additionally, AG ¶ 11(b) does not apply. Applicant clearly stated that she is unwilling to renounce her citizenship with France and Tunisia.

While the U.S. government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second or third nationality, the Department of Defense does not require the renunciation of foreign citizenships in order to gain access.⁴ Yet, there must be adequate assurances that a dual citizen will not actively exercise or seek rights, benefits, or privileges of those foreign citizenships. In the instant case, Applicant established significant ties consistent with her U.S. citizenship since coming to the U.S. in 1995. As a child she wanted to come to the U.S. She achieved that dream by earning two internships in the U.S. during her undergraduate education. After college, she moved to the U.S. and has lived the majority of her adult life in the United States. She has worked over 13 years for a government contractor and feels strong ties to the company and to the U.S. Applicant has surrendered her Tunisian and French passports to her Facility Security Officer, invoking application of mitigating condition AG ¶ 11(e). She married a U.S. citizen, although they later divorced. She has chosen to raise her

² ICSR Case No. 03-23806 at 5 (App. Bd. April 28, 2005.)

³ Id.

⁴ AG ¶ 11(b) provides that an expressed willingness to renounce a dual citizenship can be mitigating, but unwillingness to renounce a dual citizenship is not, in and of itself, a disqualifying condition under AG ¶ 10.

daughter in the U.S. and is actively involved in her school and her extracurricular activities. Recent ties to Tunisia and France are limited to visits with family members once or twice a year, weekly telephone calls, and e-mails. Applicant has no bank accounts in Tunisia or France and owns no property in either country. At the hearing, Applicant expressed her affinity with the U.S. She is unlikely to act in preference to any other foreign country over the U.S.

Guideline B, Foreign Influence

The security concern for the Foreign Influence guideline is set out in AG ¶ 7:

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 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.

The guideline notes nine conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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; 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.

The Government raised concerns over possible foreign influence because of Applicant's close ties of affection to her mother, father, sister, and brother, who are residents and citizens of France and possess dual citizenship with Tunisia. Applicant travels twice annually to visit her family in both France and Tunisia. Applicant also has a distant cousin (her mother's cousin), who is a General in the Tunisian military. Not only does disqualifying condition AG ¶ 7(a) require the presence of foreign contacts, it also requires that a heightened risk be present. Government Counsel failed to provide information establishing a heightened risk by Applicant's immediate family members' French residency and citizenship. However, it did introduce sufficient evidence on terrorist activities in Tunisia and the Tunisian government's human rights abuses to establish a heightened risk relating to her immediate family member's dual citizenship

with Tunisia, her mother's cousin in Tunisia, and Applicant's travel there. These contacts raise security concerns under AG ¶ 7(a).

The Government also expressed concern about Applicant's hypothetical inheritance of properties in France and Tunisia. Her potential to inherit her parents' property in Tunisia and France is too speculative at this point to raise a concern under AG ¶ 7(e). Her parents are both alive, Applicant has never seen their wills nor discussed their plans for their properties, and she has two siblings who could also potentially inherit the properties.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and find that the following mitigate the concern under AG ¶ 7(a):

(a) the nature of the relationships with foreign persons, the country in which these people 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; and

(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 immediate family members live in France. Her parents own two properties in Tunisia and vacation there periodically. Her parents are retired. Applicant has traveled to Tunisia annually during her summer vacation to spend time with her family at their beach house. She also has a distant relative, her mother's cousin, who is a General in the Tunisian military. Despite these facts, it is unlikely Applicant will be placed in a position of having to choose between the interests of her family or the Tunisian government and the interests of the U.S. because her contacts with Tunisia are infrequent and non-political, with the exception of the distant relative.

With respect to Applicant's mother's cousin, the contact and communication between Applicant and the General is infrequent and casual. Applicant does not communicate with this individual from the U.S. and only sees him at family events when she is in Tunisia. She was not even aware until this past September that he was in the military. AG ¶ 8(c) applies only to Applicant's mother's cousin.

Additionally, Applicant has little loyalty to Tunisia, other than enjoying her travel there, but has developed deep and longstanding relationships in the U.S. After graduating from college, she chose to move to the U.S. She decided to marry a U.S. citizen. She chose to raise her daughter in the U.S. She has all of her assets in the U.S. She has dedicated her career to serving as a government contractor. She has made her life here, and is involved her daughter's numerous extracurricular activities and schooling. She is close to her co-workers and considers them to be her "family." While she does love her family members and enjoys traveling to Tunisia, Applicant has expressed strong sentiments toward the U.S. that are unparalleled by her remaining feelings towards vacationing in Tunisia with her family. Further, despite her apparent unwillingness to relinquish her Tunisian citizenship, she has relinquished her Tunisian passport to her FSO. This act demonstrates her loyalty to the U.S. and her willingness to comply with DoD requirements. While she acquired her Tunisian passport to try to keep a low profile when traveling abroad, she will now either have to forgo traveling to Tunisia entirely, or travel to Tunisia on her U.S. passport. She was forced to make a choice between retaining the Tunisian passport and the security concerns of the U.S. Government. She chose to satisfy the concerns of the Government. Similarly, she can be expected to resolve any potential future conflicts of interest in favor of the U.S. Mitigating conditions AG ¶¶ 8(a) and 8(b) apply.

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 relevant 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant's letters of support and work performance evaluations show she is a valued employee. Her supervisors and colleagues, who have known Applicant for a

number of years, have no reservations about recommending her for a security clearance. She has shown herself to be honest and truthful about her ties to France and Tunisia, and at the same time, very capable of fulfilling her obligations of a clearance and U.S. citizenship. Based on the evidence before me, I conclude it is clearly consistent with the national interest to grant Applicant a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Preference and Foreign Influence security concerns.

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

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: 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.

Jennifer I. Goldstein
Administrative Judge