



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



In the matter of:)	
)	
xxxxxx, xxxx)	ISCR Case No. 09-07693
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

February 17, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant was born, raised, and educated in the United States. His visits to Tunisia occurred during his childhood, and his contact with his grandmother, a Tunisian resident, is limited to once a month. Applicant has mitigated the foreign influence security concern. Applicant surrendered his Tunisian passport to his company’s facility security officer (FSO). Applicant has mitigated the foreign preference security concern. Clearance is granted.

Statement of the Case

On June 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C, foreign preference, and B, foreign influence. 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 adjudicative guidelines (AG).

Applicant answered the SOR on August 26, 2010, admitting all of the allegations. He requested a hearing, and the case was assigned to me on October 6, 2010. On October 12, 2010, a notice of hearing was issued scheduling the case for November 2, 2010. The hearing was conducted as scheduled. I admitted three government exhibits, and Applicant testified. At Applicant's request, I left the record open through November 22, 2010. Within the time allotted, he submitted an exhibit that I marked and admitted as Applicant's Exhibit (AE) A. DOHA received the transcript on November 10, 2010.

Preliminary Ruling

I took administrative notice, at Department Counsel's request, of facts about Tunisia, encapsulated in five exhibits published by the U.S. State Department (HE I-III, V), and the Congressional Research Service. (HE IV) On or about January 22, 2011, the Tunisian chief of state resigned after several days of massive political protests. Because a "current and accurate assessment of the 'geopolitical situation' and the security/intelligence profile of the [foreign] country vis-a-vis the United States is crucial in Guideline B cases,"¹ I reopened the record on January 26, 2011, extending it through February 2, 2011, to allow both parties the opportunity to supplement the record with updated administrative notice documents. Within the time allotted the Government submitted a copy of a two-page U.S. State Department travel warning issued January 16, 2011. I received this document at HE VI and will incorporate the facts therein in my Decision.

Findings of Fact

Applicant is a 24-year-old single man. He graduated from college in 2008, earning a bachelor of science degree in mechanical engineering. Since graduating, he has worked for a defense contractor in the information technology field. He has maintained a security clearance since 2008.

Applicant's parents were born in Tunisia. His father immigrated to the United States in 1977, and his mother arrived in 1981. Both are now U.S. citizens. They retain their Tunisian citizenship by virtue of birth. (Tr. 23) Both parents work at the French embassy. His mother is a visa specialist and his father is an immigration officer. They were hired as Americans, not Tunisians. (Tr. 37)

Applicant was born and raised in the United States. He has dual Tunisian citizenship through his father. During his childhood, he visited Tunisia with his parents approximately every three years. (Tr. 27) His last trip to Tunisia was in 2003, before graduating from high school. He has never lived in Tunisia.

When Applicant travelled to Tunisia, he used a Tunisian passport that his parents obtained for him. That passport expired in 2009. Under Tunisian law, it renewed automatically. (Tr. 19) As of the date of the hearing, the passport was in Applicant's

¹ISCR Case No. 07-04496 (App. Bd. October 22, 2008) at 4

possession. Applicant surrendered the passport to his company's FSO on November 22, 2010. (Ex. A) Applicant has never lived in Tunisia, and has no Tunisian financial interests. (Tr. 34)

Applicant's maternal grandmother is a citizen and resident of Tunisia. (Tr. 34) Thirty years ago, before retiring, she worked as an administrative clerk in the country's private sector. (Tr. 32, 34) Applicant's maternal grandfather was a radiologist at a private hospital. (Tr. 34) He is deceased. Applicant's grandmother receives a pension. (Tr. 33)

Applicant has four uncles on his mother's side of the family, and three uncles and seven aunts on his father's side. (Tr. 35) He does not maintain any contact with these relatives. (Tr. 36) Applicant talks to his grandmother approximately once per month using SKYPE. (Tr. 34) The last time he saw her was when she visited the United States in 2006. (Tr. 36)

Tunisia is ostensibly a republican government with a bicameral legislature, an executive branch, and a judiciary. However, its republican structure is largely a facade. In reality, for nearly all of its existence, a ruling party has dominated the government, holding sham elections, and intimidating any political opposition. (HE I at 1; IV at 4) Since gaining independence from France, Tunisia has been ruled by two authoritarian leaders, Habib Bourguiba, who ruled from 1956 to 1987, and Zine el-Abidine ben-Ali, who ruled from 1987 until January 2011 when he stepped down under intense pressure.

The ben-Ali regime imposed restrictions on freedom of association and freedom of the press. In 2009, there were frequent reports of torture and abuse of prisoners, particularly political prisoners. (HE I at 5)

Tunisia possesses some elements of a democratic society, including trade unions and organizations of journalists who promote freedom of the press. (*Id.*) Tunisia is a leader in the Arab world in promoting the legal and social status of women. (*Id.*)

Over the years, Tunisia has integrated its economy into the global marketplace, and is publicly committed to free trade and export-led growth. (*Id.* at 6-7) Consequently, it has enjoyed stable growth. (*Id.* at 6)

The United States and Tunisia have had a continuous, strong relationship for more than 200 years. (HE IV at 8) The ben-Ali regime was a strong U.S. partner in fighting terrorism. (*Id.* at 5) A U.S. - Tunisian Joint Military Commission meets annually and holds exercises regularly. (*Id.* at 8) In December 2003, the Tunisian parliament passed a comprehensive anti-terrorism law. (*Id.* at 6)

Several terrorist groups are active in Tunisia. (*Id.* at 5) Several Tunisian citizens have been implicated in terrorist plots abroad. (*Id.*) The ben-Ali regime sometimes used its aggressive commitment to counterterrorism as a pretext to suppress political freedom. (*Id.* at 7) On January 16, 2011, the State Department issued a travel warning

urging citizens not to travel to Tunisia because of current political and social unrest. (HE VI)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 overarching 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."

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 for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set forth, as follows:

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. (AG ¶ 6)

Tunisia historically has been a U.S. ally firmly committed to fighting Islamic extremists. Relative to other countries in the region, it is socially moderate, encouraging, among other things, women's rights. It has increasingly sought to integrate its economy into the global marketplace. Conversely, terrorist groups are present in Tunisia and several Tunisian nationals have been implicated in terrorist attacks abroad. Although the Tunisian government has historically fought terrorism aggressively, the government is currently undergoing profound political upheaval. Consequently, it is not clear what stance the government that emerges from the crisis will take toward U.S. relations or counterterrorism. Under these circumstances, AG ¶ 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," applies to Applicant's relationship with his grandmother, a Tunisian resident citizen.

Applicant was born and raised in the United States. Both his parents are U.S. citizens who have lived here for approximately 30 years. Applicant was educated in the United States and has no Tunisian financial interests. All of his visits to Tunisia occurred when he was a child, and his most recent visit was more than seven years ago. AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to a foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," applies.

Applicant's contact with his grandmother is limited to once per month. He has not seen her in four years. AG ¶ 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," applies.

I conclude Applicant's relationships and loyalties in the United States, together with the casual and infrequent nature of his relationship with his grandmother outweigh the heightened risk generated by his grandmother's Tunisian citizenship and residency. Applicant has mitigated the foreign influence security concern.

Guideline C, Foreign Preference

Under this guideline, "when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." (AG ¶ 9) As of the hearing date, Applicant possessed a valid Tunisian passport that he used to travel to Tunisia. AG ¶ 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 [including] but not limited to . . . possession of a current foreign passport," applies.

Applicant did not originally obtain his Tunisian passport; his parents did. All of his trips to Tunisia using the Tunisian passport occurred during childhood. Applicant has surrendered his Tunisian passport to his company's FSO. Applicant has never lived in Tunisia and does not have any Tunisian property interests. AG ¶ 11(e), "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated, applies. Applicant has mitigated the foreign preference security concern.

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.

Applicant is not a Tunisian immigrant. Rather, he is a first-generation U.S. citizen. Applicant travelled to Tunisia as a child with his parents, and has not returned since then. His only remaining contact in Tunisia is his grandmother with whom he communicates only once per month. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the 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
Paragraph 2, Guideline B	FOR APPLICANT
Subparagraph 2.a:	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.

MARC E. CURRY
Administrative Judge