



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



In the matter of:)
)
) ISCR Case No. 09-08642
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

February 25, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated security concerns under Guidelines B. However, he failed to mitigate Guideline E security clearance concerns because he deliberately disregarded his military supervisor’s instructions and security policies while deployed. His overall behavior show questionable judgment, untrustworthiness, unreliability, lack of candor, and an unwillingness to comply with rules and regulations. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 5, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a

preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On June 30, 2010 and August 5, 2010 (amended statement of reasons (SOR)), DOHA issued Applicant an SOR, which specified the basis for its decision – security concerns under Guideline B (Foreign Influence), and Guideline E (Personal Conduct) of the adjudicative guidelines (AG).²

On July 4, 2010 and August 17, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 25, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on September 14, 2010, scheduling the hearing for October 12, 2010. The hearing was convened as scheduled.

The Government offered exhibits (GE) 1 through 6, which were admitted without objection. GE 7 is a request for me to take administrative notice of certain facts about the country of Morocco. Applicant did not object, and the request was granted. GE 7 was marked for identification, but not admitted. Applicant testified, and he presented Exhibits (AE) A through O, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 20, 2010.

Procedural Issue

Applicant's sponsorship for a security clearance was confirmed by the government contractor and Department Counsel. (Hearing Exhibit (HE 1))

Before the hearing, Department Counsel amended the SOR by adding three allegations under Guideline E, SOR ¶¶ 2.b, 2.c, and 2.d. In substance they allege that Applicant violated security policies established by a military unit, that he disregarded established personnel procedures, and that he resided in the United States illegally for five years. (HE 2)

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.c, 2.a, and 2.d. He denied SOR ¶¶ 2.b and 2.c. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

² Adjudication of this case is controlled by the AGs, implemented by the DoD on September 1, 2006.

Applicant is a 55-year-old Arabic translator/linguist working for a governmental agency since April 2010. He was born, raised, and educated in Morocco. He left Morocco at age 21 to attend college in France. The government of Morocco paid for his education in France. As a student, he avoided military service in Morocco. While in France, he completed an associate's degree in languages in 1979, and a doctorate degree in U.S. history in 1986. He resided in France until 1985, when he entered the United States under a student visa for three months. That same year, he returned to the United States under a tourist visa. After his visa expired, Applicant remained in the United States illegally for approximately five years. In 1988, he worked for a couple of months as a translator for another Middle East country's embassy in the United States. He also received a master's degree in translation from a Swiss university in 1992.

Applicant married his first wife, a U.S. citizen, in 1990, and they were divorced in 1995. He became a naturalized U.S. citizen in 1994. He married his current wife, then a citizen and resident of Morocco, in September 2000. She became a naturalized U.S. citizen in September 2008. They have two U.S. born children, ages six and four. Applicant's last Moroccan passport was issued to him in 1986. He claimed he lost this passport and never renewed it or used it after he received his U.S. passport.

Applicant's parents are both deceased. They were both citizens and residents of Morocco. His father had retired from a job with a local government in Morocco. Two of his older brothers are also deceased. Applicant has three brothers and three sisters who are citizens and residents of Morocco. Two of his brothers worked for the Moroccan government. Both are currently retired. All of his sisters are homemakers.

Applicant's parents-in-law are both citizens and residents of Morocco. During a May 2008 interview with another agency, Applicant stated he had contact with his parents-in-law at least once a week. He has a diverse range of contacts with his siblings, extended family members, and friends who are residents and citizens of Morocco, varying from between once a month to once a year. His father-in-law is a retired merchant. His mother-in-law has been a housewife all her life. In a September 2009 sworn statement provided to the Office of Personnel Management (OPM), Applicant indicated he had telephonic contact with his in-laws once a week. He stays with his in-laws whenever he visited Morocco. His brother-in-law is a retired Moroccan police officer. Applicant has contact with him once a year.

In September 2009 OPM statement, Applicant claimed his last telephonic contact with his three male siblings was in 2008, when another of his brothers died. His last personal contact with his siblings was in 2007, when he visited Morocco. He has telephone contact with his oldest sister every three months and visits with her every time he is in Morocco. Applicant travelled to Morocco to visit his family in August 2002, July-August 2005, December 2006-January 2007, March 2007, November 2007, and September 2008.

Applicant started working as an Arabic translator in late 1995. Since then, he has worked for approximately eight U.S. companies as a translator, linguist, and analyst

assisting the U.S. military in the Middle East. His employment required him to work side by side with U.S. military forces and companies in Saudi Arabia, Qatar, and Bahrain sometimes in a hostile environment. Except for the allegations in the SOR, Applicant is considered to be an outstanding worker and a skilled and competent linguist and translator. Applicant has had access to classified information since 2004. There is no evidence that he has compromised or caused others to compromise classified information, or that he has been involved in any security violations. He has received numerous certificates of appreciation and letters of commendation for a job well done.

Applicant applied for a position as a linguist with government agency 1 (GE A) in 1998. He was not offered the position because he failed a polygraph-assisted interview. From around November 2002 until March 2003, Applicant was employed by a U.S. company and assigned to work as a linguist for a U.S. military agency in the Middle East. Applicant's commander prohibited Applicant from travelling off base and acting independently without the permission of his supervisor. Applicant violated these instructions and local security policies by travelling off base approximately 13 times and by renting a car without permission. When confronted about his violations, Applicant quit his job and departed the area without coordinating with his military supervisor. He traveled back to the United States on his own travel arrangements. Applicant was aware of the security policies, but he elected to disregard them because he felt the policies were not justified or fair. In his commander's opinion, Applicant's behavior was deceptive, and he was unreliable and untruthful about his whereabouts on and off duty.

Applicant testified that his military commander was an idiot, a racist, a bigot, and that the commander had a personality conflict with him. According to Applicant, the commander prohibited him from attending religious services at a local mosque. Applicant requested from his commander an explanation for the security rules that required him to reside on base and to travel only with permission of the commander. Applicant was not satisfied with his commander's explanations and he disregarded the security policies. Applicant believed he did not have to obey the commander because he was an American civilian and not a servicemember. He elected to do whatever he wanted to do after duty hours.

In 2004, government agency 2 (GE B) hired Applicant as a linguist and granted him access to classified information at the secret level. He was granted an interim top secret clearance in late 2005. That same year, he applied for a position with government agency 3 (GE C) and he was denied a clearance because of his overseas contacts.

In 2006, he applied for a linguist position with government agency D (GE D) and he was denied the position after he failed a polygraph-assisted interview. According to the denial letter, Applicant disclosed during interviews that in 1993 he inherited a house in Morocco from his father, that he owned a rental property in Morocco with other family members, and that he and his wife had a Moroccan joint bank account that he used to provide financial assistance to his in-laws.

In his September 2009 OPM sworn statement, Applicant explained that the only time he supported his mother-in-law was in 2006, when she came to the United States to help take care of his wife who was having a difficult pregnancy. In his 2009 statement and in his April 2010 response to DOHA interrogatories, he denied he inherited a house from his parents. He stated that his father rented an apartment provided to him at a discounted rent by a Moroccan municipality as part of his retirement benefits. After his father died in 1985, Applicant continued to pay the \$9 a month rent and used the property to store his personal belongings. He denied owning or having any interest in any other property in Morocco, except for the personal property he stored at his father's apartment. He claimed that in August 2008, he told his sister he was abandoning any interest in his personal property and the rental property.

In 2002, Applicant opened two bank accounts in Morocco to have access to money when he and his wife travelled to see their families. He claimed he closed one bank account in July 2008, because he understood it was creating a security concern. He indicated he never had more than \$2,000 in that account, and that at the time it was closed the account had \$700. He acknowledged that he had failed to disclose in his SCA the bank account. He explained that he sometimes did not understand what was asked of him on the security clearance applications, and that he sometimes did not disclose the bank accounts because he did not consider it important.

At his hearing, Applicant explained that the largest sum of money he ever held in the bank account was \$3,000. Later, he contradicted himself and stated that in 2008, he transferred \$10,000 into the Morocco bank account to pay for some dental work he had performed. Applicant claimed he does not know whether his wife currently has a bank account in Morocco.

Applicant considers the United States his home and testified his loyalties lie completely with the United States. As a child, he always wanted to be a U.S. citizen to have the freedom to become whoever he wanted to be. He viewed the United States as the "city in the hill" and the "dream land within reach." Applicant's only concern is for his wife and kids in the United States. He is no longer concerned about his siblings and extended family living in Morocco. He averred he cannot be coerced or blackmailed through his extended family in Morocco.

Applicant presented numerous favorable letters of reference and commendation issued to him by government contractors. He was lauded for his Arabic language ability and his technical skills. Because of his origin, linguistic ability, and cultural background, Applicant was considered to be an invaluable resource to the U.S. government contractors and agencies he worked for in the Middle East.

I take administrative notice that the government of Morocco is a constitutional monarchy with a parliament and an independent judiciary; however, the ultimate power resides with the King. The King is the head of the military and the religious leader of the majority Sunni Moslem population. Morocco is recognized as a moderate Arab state, and it maintains close relations with the United States. It is one of the United States

oldest and closest allies in the region. Morocco was among the first Arab and Islamic states to denounce the September 11, 2001 terrorist attacks on the United States, and to declare its solidarity with the United States in the war against terrorism. Although Morocco has seen its own terrorism at home, the government has pursued a comprehensive counterterrorism approach that has reduced the terrorist threat and Moroccan authorities continue to disrupt groups seeking to attack U.S. or Western targets.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 applicant 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 expressed or implied determination about Applicant’s allegiance, loyalty, or patriotism. It is merely an indication that 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996); and ISCR Case 08-06605 at 3 (App. Bd. Feb. 4, 2010).

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 or her] 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

Guideline B, Foreign Influence

Under AG ¶ 6 the security concern is that:

Foreign contacts and interests may be a security concern if 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 sets out four conditions that 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;

(d) sharing living quarters with a persona or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign 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 or foreign influence or exploitation.

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 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. Applicant has frequent contacts and a close relationship of affection and/or obligation with his siblings, extended family members, friends, and his in-laws, all of whom are Moroccan citizens and residents.

These contacts create a possible risk of foreign pressure or attempted exploitation because there is always the possibility that Moroccan agents, terrorists, or criminal organizations in Morocco may exploit the opportunity to obtain sensitive or classified U.S. information. The record contains substantial evidence raising four potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Six Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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.

Applicant has strong bonds of affection and obligation toward his siblings, family members, and in-laws who are living in Morocco. Notwithstanding, in this particular case, his contacts with his Moroccan family members do not raise a heightened risk of foreign exploitation.

Applicant has lived in the United States since 1986, albeit the first five years illegally. He has worked for numerous U.S. contractors since 1994. In certain occasions, he provided support to U.S. military units in the Middle East, sometimes under hostile conditions. His wife is a U.S. naturalized citizen and his two children were born in the United States. He has a home in the United States. All of his property and financial interests are in the United States. He has no property or financial interests in Morocco. Considering the evidence as a whole, his past behavior shows that his loyalties are to the United States and to his wife and children in the United States. Applicant's level of contact with family members in Morocco, and Morocco's government's past behavior do not create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant can be expected to resolve any possible conflict of interest in favor of the United States. AG ¶¶ 8(b) and (f) apply.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant entered the United States in 1985 under a tourist visa; however, he overstayed his visa and remained in the United States illegally for five years. The U.S. government was aware of this fact when he was naturalized as a U.S. citizen.

Applicant applied for jobs that required access to classified information in four different government agencies: in 1988, 2002, 2005, and 2006. He explained that GE A and GE D denied his applications for a security clearance because he failed polygraph-assisted interviews, and because of his foreign contacts. He was denied the position with GE C because of his foreign contacts. He was granted a secret clearance by GE B in 2002 and an interim top secret clearance in 2004.

Applicant's final top secret clearance was denied in 2006 because of his foreign contacts, and because he failed to disclose in his SCA that he had inherited a home in Morocco, that he had rental property in Morocco with other family members, and that he had a bank account in Morocco.

Applicant denied he inherited any real estate property from his parents. He only acquired the ability to continue to rent his father's apartment at the discounted rate his father received from the Moroccan municipality his father retired from. Applicant averred that the investigator misunderstood his statements. He rented his father's apartment until 2008, when he was made aware of the possible adverse security concerns raised by the rental of real estate property in a foreign country. He claimed he disavowed any interest he may have in the rental property.

Applicant opened a Moroccan bank account for convenience when traveling to Morocco. He admitted he sometimes failed to disclose his foreign bank account on his SCA because he did not consider it important. Applicant also provided inconsistent statements concerning the number of bank accounts he had in Morocco, the amounts of money deposited in the bank accounts, the date he closed the bank account, and the purpose of the bank accounts. Additionally, Applicant claimed that he has no knowledge of whether his wife has any bank accounts in Morocco.

Between November 2002 and March 2003, Applicant was employed by a U.S. company as a linguist, and he was detailed to work for a U.S. military unit in the Middle East. Applicant's supervisor, a military commander, established security policies that prohibited Applicant from travelling off base and from travelling around without approval. Applicant violated these instructions and local security policies by travelling off base approximately 13 times, and by renting a car without permission. Applicant was aware of the security policies, but he elected to disregard them because he felt the policies were not justified or fair. When confronted about his violations, Applicant quit his job and departed the area without coordinating his departure with his military supervisor. He traveled back to the United States on his own travel arrangements. In his commander's opinion, Applicant's behavior was deceptive, and he was unreliable and untruthful about his whereabouts on and off duty.

Applicant testified that his military commander was an idiot, a racist, a bigot, and that the commander had a personality conflict with him. According to Applicant, the commander prohibited him from attending religious services at a local mosque. Applicant requested from his commander an explanation for the security rules that required him to reside on base, and to travel only with permission of the commander. Applicant was not satisfied with his commander's explanations, and he disregarded established security policies. Applicant explained at his hearing that he believed he did not have to obey the military commander because he was an American civilian and not a servicemember. As a civilian, Applicant believed he could do whatever he wanted to do after duty hours. Applicant's overall behavior triggers the applicability of the following disqualifying conditions:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

AG ¶ 17 lists seven conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find none apply. Applicant's overall behavior, i.e., his illegal stay in the United States, his failure to disclose financial and proprietary interests in Morocco in his SCA, and his deliberate failure to follow his military commander's security policies while deployed to the Middle East, show questionable judgment, untrustworthiness, unreliability, lack of candor, and an unwillingness to comply with rules and regulations.³ Considering Applicant's age, background, education, his experience working with different U.S. contractors and military units, and his demeanor, I do not find his testimony about his failure to disclose financial and proprietary interests in Morocco credible.

³ The SOR did not allege that Applicant falsified any security clearance applications. I have not considered any non-SOR allegations as a basis to deny his clearance. However, in ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered Applicant's conduct for purposes consistent with the cited cases.

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 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.

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 have incorporated my comments under Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2(c) were previously addressed under those guidelines, but some warrant additional comment.

From 1995 until 2008, Applicant worked for approximately eight U.S. companies as a translator, linguist, and analyst assisting the U.S. military in the Middle East. He worked with U.S. military forces and companies in Saudi Arabia, Qatar, and Bahrain sometimes in a hostile environment. Except for the allegations in the SOR, Applicant is considered to be an outstanding worker and a skilled and competent linguist and translator. Applicant has had access to classified information since 2004. There is no evidence that he has compromised or caused others to compromise classified information, or that he has been involved in any security violations. He has received numerous certificates of appreciation and letters of commendation for a job well done. Because of his origin, linguistic ability, and cultural background, Applicant was considered to be an invaluable resource to the U.S. government contractors and agencies he worked for in the Middle East.

Considering Morocco's government's actions and current relations with the United States, Applicant's past behavior and service to the United States under dangerous conditions, and Applicant's diminished contacts with his relatives and in-laws in Morocco, his foreign contacts and small property interest in Morocco do not raise a heightened security concern under Guidelines B. He has made the United States his home since 1985. His loyalties are to the United States and his wife and children in the United States. He can be expected to resolve any possible conflict of interest in favor of the United States.

Notwithstanding, Applicant failed to mitigate the security concerns arising from his personal conduct. Applicant's overall behavior show questionable judgment, untrustworthiness, unreliability, lack of candor, and an unwillingness to comply with rules and regulations. Moreover, considering Applicant's age, background, education, his experience working with different U.S. contractors and military units, and his demeanor, I do not find his testimony about his failure to disclose financial and proprietary interests in Morocco credible.

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 B:	FOR APPLICANT
Subparagraphs 1.a to 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.d:	For Applicant
Subparagraphs 2.b and 2.c:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge