



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



In the matter of:)	
)	
)	ISCR Case No. 10-01773
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel

For Applicant: *Pro se*

September 29, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on February 1, 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.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On April 20, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).² Applicant submitted a notarized Answer to the SOR dated May 11, 2011, in which he admitted the allegations. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on June 2, 2011, and the case was assigned to me on June 15, 2011. DOHA issued a Notice of Hearing on June 27, 2011, and I convened the hearing as scheduled on Jul 28, 2011. I admitted three Government Exhibits, (GE) 1 - 3. Applicant testified, and offered six exhibits, which I admitted as Applicant Exhibits (AE) A through F. I granted Applicant's request to hold the record open to receive additional documentation. He timely submitted two documents, which Department Counsel forwarded without objection. I admitted them as AE G and H. The transcript was received on August 4, 2011, and the record closed on August 31, 2011.

Procedural Ruling

I take administrative notice of facts relating to Tunisia and Bahrain, set forth in ten U.S. government documents submitted by Department Counsel. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant, 39 years old, is a U.S. citizen, born in Puerto Rico. At the age of five, he moved to the United States with his maternal grandparents, who raised him. He attended school in the United States until the age of 15, when he returned to Puerto Rico and completed his high school education. He then joined the U.S. Army in 1990, where he worked as a communications security repairman. He briefly returned to the United States in 1991, after joining the Army. He held a top secret security clearance during his nine years of service, without incident. He was honorably discharged as an E-4 specialist in 1999. He earned some college credits while in the Army, but did not complete a degree. His first marriage, to a German citizen, ended in divorce in 1998. (GE 1; Tr. 25-31, 39, 42-43)

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant lived and worked in Germany for seven years while serving in the Army. After his discharge, he worked as a civilian for the Army Exchange system. Later, he was unemployed for about nine months. In 2002, he began his current job with a U.S. defense contractor in Bahrain. He held a top secret clearance with this company from 2004. (GE 1, 2, 3)

In 2004, Applicant also met his current wife, a 31-year-old Tunisian citizen. She was a flight attendant for a Bahraini airline, and later worked in public relations for private companies. They married in Bahrain in 2006. Applicant, with his wife and children, lives in Bahrain. Applicant's wife no longer works outside the home. Their three-year-old son and two-year-old daughter are dual U.S.-Tunisian citizens. Applicant's children have both U.S. and Tunisian passports. He intends to send both children to the U.S. school in Bahrain. He also intends to initiate the process for his wife to obtain alien registration status. (AE C – E, G, H; Tr. 26-36, 43, 44-47, 50)

Applicant and his wife traveled together to Tunisia three times between 2004 and 2006 to visit her family. Since 2008, they have visited annually, although Applicant did not visit in 2011. They stay two to three weeks. Applicant also has relatives in the United States, including a half-brother and an aunt. He has a close relationship with his half-brother, who is handicapped. He is also in touch with his aunt. (Tr. 36-39, 41-42)

Applicant's parents-in-law, sister-in-law, and brother-in-law are citizens and residents of Tunisia. His father-in-law is 62 years old, and his mother-in-law is 55 years old. His mother-in-law has always been a homemaker. His father-in-law receives a pension from his former position as supervisor of an olive oil factory. They have had no connection with the Tunisian government or the military. They are unaware of details about Applicant's job or his security clearance. (GE 2; Tr. 54-58)

Applicant's wife calls her parents about weekly. Applicant does not speak with them because he does not speak the Tunisian language. None of her family was involved in the anti-government protests, which he testified took place in other areas, several hours away from her family. (Tr. 58-61)

Applicant's brother-in-law and his family live in Tunisia. He studied agriculture in school. Currently, he does not have steady employment. He is married, with four children, and lives with Applicant's parents-in-law. Applicant's wife talks with him once or twice per month. Applicant's sister-in-law is a Tunisian citizen, living in Bahrain. She is a flight attendant. Applicant's wife sees her sister once or twice per week. (GE 2; Tr. 62-63, 65-69)

Applicant's wife bought a 1.5-acre parcel of land in 2005, before their marriage. It cost about 100,000 dinar at the time (Applicant could not estimate the value in US dollars). Her intent was to allow her brother to farm it. However, her brother could not use the land because of its location, and he was not able to farm it. Applicant's wife hopes to sell the property. (GE 2; Tr. 51-54, 57-58)

Applicant's wife bought an rental property in Tunisia for \$65,000. Applicant gave her \$40,000 and she paid the remainder. Applicant estimates the undeveloped land is worth about twice as much as the rental unit. Applicant does not own property in Bahrain. He has assets in the United States, including his 401(k) and individual retirement account (IRA). He estimates the total value to be approximately \$200,000. (GE 2; Tr. 51-54, 57-58)

In 2004, Applicant opened two savings accounts in Iraq, depositing U.S. dollars in one and Iraqi dinar in the other. He expected that when the dinar rose in value, it would generate a substantial return in U.S. dollars. The value of his U.S. deposit was \$822. He did not make any further deposits after 2004. When he realized the account constituted a security concern, he notified the bank to close it and transfer the funds to his U.S. bank account. In May 2011, the funds were transferred and the foreign account was closed. (GE 2; AE B; Tr. 70-73)

Applicant's manager for the past nine years submitted a letter attesting to Applicant's patriotism and dedication. He noted his consistent progression, and that he was recently promoted to site lead. He describes him as "vigilant when it comes to security awareness" in a job that directly supports the war-fighter. He describes Applicant's maturity, honesty, and integrity. Another of Applicant's managers commented that, "I can say, without any reservation, that Mr. [Applicant] is one of the most principled and honest individuals I have met." The assistant vice-president of a large defense contractor has known Applicant since 2004, when he was single. He describes him as maturing into a dedicated family man. He is a conscientious worker, an Army veteran who speaks fondly of his military service, and a man who demonstrates loyalty and discretion. (AE F)

Administrative Notice

Bahrain

I take administrative notice of the following facts.³ The Kingdom of Bahrain achieved independence from the United Kingdom in 1971. It is a constitutional hereditary kingdom governed by the Al-Khalifa family. The country's customs and laws are based on Islamic ideals and beliefs. The government includes a bicameral body, with the lower house consisting of an elected council of representatives.

The Department of State (DOS) Human Rights Report indicated no arbitrary or unlawful killings or politically motivated disappearances in 2010. However, security forces have used torture to elicit confessions. The constitution provides for free speech and press, other than speech that infringes on public order or morals. The government generally welcomed visits by international human rights organizations.

³ The facts cited derive from the summary and documents submitted by Department Counsel.

The Bahrain and the United States signed a Defense Cooperation Agreement in October 1991, which gives U.S. forces access to Bahraini facilities. Legislation implementing a free trade agreement between the United States and Bahrain was signed in 2006. The United States designated Bahrain a Major Non-NATO Ally in 2001. Bahrain is the headquarters of the U.S. Navy's Fifth Fleet.

Although Bahrain experienced recent unrest, the U.S. DOS lifted the authorized voluntary departure status for the U.S. Embassy on May 13, 2011, because of continuing improvements in security in Bahrain. The DOS Travel Alert noted that the Embassy was operating normally, though the potential for civil and political unrest continued. It also commented that there were no indications that U.S. citizens were being targeted or threatened, but urged avoidance of all demonstrations.

Tunisia

Tunisia is a constitutional republic with a population of approximately 10 million. The United States and Tunisia maintain strong relations, which date back 200 years. The two countries have an active schedule of joint military exercises. U.S. security assistance has played an important role in cementing relations. 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. Tunisia has a large, highly educated middle class, and a long history of encouraging women's socioeconomic freedom. Islamist parties were banned by the former president, but some have gained recent legal recognition.

Although the public voted in presidential election of 2009, procedural aspects of the election raised questions whether the voting was free and fair. Before and after the elections, the government imposed severe restrictions on speech, press, and association. Security forces, which reportedly tortured and detained prisoners, acted with impunity.

In December 2010, political and social unrest in central Tunisia spread to the capital and other major cities. The president fled to Saudi Arabia in January 2011, following weeks of anti-government protests. There were no instances in which U.S. citizens or facilities in Tunisia were subject to terrorist attacks. Although the unrest was not directed at U.S. interests, the DOS warns travelers to be vigilant and remain alert to local security developments.

In March 2011, the interim government announced elections in July of a national constituent assembly. It would be charged with promulgating a new constitution, followed by presidential and parliamentary elections. As of April 2011, the unrest had diminished and public order returned to many areas, including the tourist zones.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁵ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁶ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of the Government.⁷

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 relevant disqualifying conditions under AG ¶ 7 are:

(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;

(d) sharing living quarters with a person 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 of foreign influence or exploitation.

The mere possession of close family ties to persons 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.⁸

Here, Applicant lives with his wife, who is a Tunisian citizen. They share living quarters and he has, of course, close ties of affection and obligation to her. He has more limited ties to his in-laws, who are citizen-residents of Tunisia and Bahrain. Applicant's wife owns undeveloped land in Tunisia, for which Applicant contributed a substantial portion of the cost. She also owns an apartment, which she bought as an investment. Disqualifying conditions AG ¶ 7(a), (d), and (e) apply.

The foreign influence guideline includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

⁸ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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 United States;

(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; 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's relationship to his wife, a Tunisian citizen, is close. However, the country in question is one that has a strong relationship with the United States that goes back 200 years. The recent civil unrest has diminished and public order has returned to many areas. The information provided for administrative notice did not indicate that the country targets the United States to obtain classified information. I conclude that it is unlikely that Applicant would be placed in a position of having to choose between the interests of the Tunisian government and the interests of the United States. AG ¶8 (a) applies.

The Appeal Board has held that “there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.”¹⁹ Here, Applicant has contact with his in-laws during annual visits to Tunisia. He does not provide them with financial support. He does not speak with them by phone during his wife’s calls to her family, as he does not speak their language. They have no knowledge or understanding of his job or his security clearance status. Applicant has rebutted the presumption of affection or obligation to his in-laws, because his conduct indicates that his contact with them is casual, and unlikely to create a risk of foreign influence. AG ¶8 (c) applies.

Applicant opened a bank account in Iraq in 2004. It remained open, though inactive, for several years. Once he realized the account presented a security concern, he promptly took action to close it. He presented evidence that all funds have been transferred to his U.S. bank account. Applicant has property interests in Tunisia. He and his wife purchased a rental property worth about \$65,000. She also bought an undeveloped parcel to provide her brother with land to farm. However, that plan has not worked, and she is now hoping to sell the land. Applicant could not estimate the value of the land, but expects it is about twice the value of the apartment, which would be about \$130,000. However, Applicant has a 401(k) account and an IRA in the United

¹⁹ ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002).

States worth more than \$200,000. He has substantially more net worth in United States accounts than overseas. Finally, Applicant has been employed by U.S. companies since his discharge from the Army, and his salary from a U.S. company is an important U.S. asset as well. I conclude that Applicant's foreign property interest could not be used to influence, manipulate, or pressure Applicant. AG ¶ 8(f) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Foreign family ties raise security concerns because of the potential for exploitation. Here, Applicant has close ties to his wife that raise such concerns. However, they do not outweigh his ties to the United States. He spent 10 years here, from the age of 5 to 15, receiving his education. After graduating from a high school in Puerto Rico, he joined the U.S. Army, and served for nine years. He has been employed by U.S. companies since 2000. His managers, who have known him for nine years, attest not only to his excellent work performance, but to his honesty, integrity, and patriotism. He held a security clearance while serving in the U.S. Army for nine years without incident. He also held a security clearance during his work with defense contractors since 2004. The record contains no evidence of security compromise during these 16 years.

Applicant's wife maintains two properties in Tunisia, but those assets are outweighed by his more substantial financial interests in his U.S. accounts and his U.S. employment. Given Applicant's ties to the United States, his military service, his contributions to supporting the war-fighter through his work with U.S. defense

contractors, and his many years of holding a top secret clearance without incident, I conclude that he would resolve any conflict of interest in favor of the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a. – 1.g.	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's access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge
