



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [NAME REDACTED] ) ISCR Case No. 10-02334  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

May 16, 2011

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant’s personal ties to her family in Morocco, and her family’s property interests there do not pose a security concern. However, she failed to mitigate the security concerns about her continued possession and use of a Moroccan passport. Applicant also failed to mitigate the security concerns about her deliberate falsification of her security clearance application. Based on a review of the pleadings and exhibits, Applicant’s request for eligibility for a security clearance is denied.

On November 9, 2009, Applicant submitted a Questionnaire for National Security Positions (SF 86) to obtain a security clearance required for her work with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories<sup>1</sup> to clarify or augment information in the background investigation. After reviewing the results of the background investigation and Applicant’s

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national interest to allow Applicant access to classified information. On September 1, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the adjudicative guidelines<sup>3</sup> (AG) under Guideline B (foreign influence), Guideline C (foreign preference), and Guideline E (personal conduct).

On November 15, 2010, Applicant responded to the SOR through a notarized statement and requested a decision without a hearing. On December 9, 2010, Department Counsel issued a File of Relevant Material (FORM)<sup>4</sup> in support of the Government's preliminary decision. Applicant received the FORM on December 16, 2010, and was given 30 days to file a response thereto. Applicant timely submitted a notarized response, which has been included in the record without objection. The case was assigned to me on March 2, 2011.

### **Findings of Fact**

Under Guideline C, the Government alleged that Applicant exercises dual citizenship with Morocco (SOR 1.a) by renewing her Moroccan passport on March 11, 2009, valid through March 10, 2014 (SOR 1.a(1)); and by using her Moroccan passport instead of her U.S. passport for travel to Morocco in 2009 (SOR 1.a(2)).

Under Guideline B, the Government alleged that Applicant's mother (SOR 2.a), stepmother (SOR 2.b), sister (SOR 2.c), and three brothers (SOR 2.d) are all citizens of, and reside in, Morocco. The Government also alleged that Applicant and her siblings own, by inheritance from their father, a home and a shopping center in Morocco. (SOR 2.e)

Under Guideline E, the Government alleged that Applicant deliberately falsified her SF 86 on November 9, 2009, when she answered "no" to question 6 of section 20B (*Have you EVER held or do you now hold a passport that was issued by a foreign government?*). (SOR 3.a) In a notarized response to the SOR (FORM, Item 3), Applicant admitted with explanation the allegations in SOR 1.a, 1.b, and 2.a - 2.d. She denied the allegations in SOR 2.e and 3.a. In addition to the facts established through her admissions, I have made the following findings of relevant fact.

Applicant is 33 years old and has worked for a defense contractor since March 2007 in a position that requires her to have a security clearance. She was born in

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<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included five documents (Items 1 -5) proffered in support of the Government's case.

Morocco, but became a naturalized U.S. citizen in June 2005. Applicant stated that she came to the United States “almost fourteen years” ago. (Response to FORM) She obtained an associate’s degree, a bachelor’s degree, and a master’s degree through schools in the United States, which she attended between 1998 and 2009. (FORM Item 4) Available information shows she has lived, worked, and studied in the United States without interruption since 1998. (FORM, Item 4)

Applicant received a U.S. passport in 2006. In March 2009, she renewed a Moroccan passport that she held before she was naturalized. Her foreign passport is due to expire in March 2014. (FORM, Items 3 and 5) Applicant has used her Moroccan passport on at least one occasion when she traveled to that country. Applicant explained that she presented both her U.S. and Moroccan passports when entering Morocco, but found it simpler, in light of questioning by Moroccan authorities, to use only her Moroccan passport. (FORM, Item 3)

Applicant asserted, in response to the SOR, that she was willing to relinquish her Moroccan passport. However, in response to DOHA interrogatories in June 2010, she had stated that she wished to keep her foreign passport, as it served as her only means of identification when she travels to Morocco. (FORM, Items 3 and 5) In response to the FORM, Applicant claimed that she “returned” her Moroccan passport in November 2010. However, she did not specify to whom she returned the passport, and she did not provide any documentation to support her claim.

When Applicant submitted her security clearance application in November 2009, she answered “no” when asked if she had “EVER” (emphasis in the original) held a foreign passport. Applicant’s position is that she misunderstood the question, because she never viewed Morocco as a country foreign to her. (FORM, Item 3)

Applicant and her husband, also a naturalized U.S. citizen from Morocco, have been married since January 2007. As alleged in SOR 2.c and 2.d, Applicant has a sister and three brothers, who are citizens of and reside in Morocco. Applicant admitted the allegations in SOR 2.a and 2.b; however, the SF 86 (FORM, Item 4) indicates that Applicant’s mother and stepmother are both deceased. Applicant also indicated in her response to the SOR (FORM, Item 3) that her mother is deceased.

Applicant tacitly<sup>5</sup> admits the SOR 2.e allegation that she and her siblings owned property in Morocco inherited from their father. However, Applicant averred that she and her siblings surrendered their interests in the properties to one of her brothers (FORM, Item 3; Response to FORM), and that she currently holds no assets in Morocco.

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<sup>5</sup> There is no direct support in the Government’s information for SOR 2.e. Applicant answered “no” to SF 86 questions in Section 20 (Foreign Activities) regarding foreign financial interests. One must assume that this information was discussed during the subject interview on January 7, 2010, referred to, but not documented, in DOHA interrogatories question 2 (FORM, Item 5).

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>6</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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 presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG 6, Guideline B (Foreign Influence) and AG ¶ 9, Guideline C (Foreign Preference).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>7</sup> for an applicant to either 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 for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of

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<sup>6</sup> Directive. 6.3.

<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## Analysis

### Foreign Preference

Applicant admitted the allegations at SOR 1.a and 1.b. Her possession and use of a foreign passport in preference to her U.S. passport raises a security concern expressed at AG ¶ 9 (*Guideline C: Foreign Preference*) as follows:

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.

More specifically, available information requires application of the disqualifying conditions at 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. This includes but is not limited to: (1) possession of a current foreign passport...*), and AG ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*). As to AG ¶ 10(b), by using her Moroccan passport, Applicant used her status as a Moroccan citizen for the ease of travel to that country. Applicant also has expressed her desire to retain her foreign passport as a means of identification when she travels there. However, she did not explain why she could not use her U.S. passport for the same purpose.

By contrast, of the mitigating conditions listed under AG ¶ 11, only those at AG ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*); AG ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority*); and AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) are pertinent to the facts and circumstances of this case. However, the record does not support their application.

The mitigating condition at AG ¶ 11(b) does not apply because Applicant, although she expressed a willingness to give up her foreign passport, has never articulated any willingness to relinquish the foreign citizenship which entitles her to that passport. As to AG ¶ 11(d), there is nothing in the record to indicate that her renewal and use of a foreign passport has been approved by anyone in a position to do so. Finally, AG ¶ 11(e) does not apply despite Applicant's claim that she has "turned in" her Moroccan passport. She has not corroborated her claim through any official documentation from the Moroccan government or any other cognizant authority. On balance, Applicant has failed to mitigate the security concerns raised by her continued possession and use of a foreign passport.

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<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

## Foreign Influence

The Government alleged in SOR 2.a - 2.e that Applicant's family ties and property interests in Morocco raise a security concern, which is expressed at AG ¶ 6, 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.

At the outset, SOR 2.a and 2.b are resolved for the Applicant. The Government's own information reflects that Applicant's mother and stepmother are deceased.

Of the disqualifying conditions that are pertinent to the facts and circumstances of this case under Guideline B, 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*) (*emphasis added*), AG ¶ 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*), and AG ¶ 7(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*) must be considered.

As to AG ¶ 7(a), it must be shown that Applicant has contact with persons who are citizens of or resident in a foreign country. It also must be shown that those contacts create a heightened risk of foreign exploitation. The Government established that Applicant has a sister and three brothers who are citizens of and reside in Morocco, and that Applicant may have had a shared interest in property there that Applicant avers is now in the hands of one of her siblings. Her family ties are presumed to be close, and the financial interest, if she still holds it, significant. However, the FORM did not contain any information about the country of Morocco, its government, or its relationship with the United States. It cannot be determined if, for example, Morocco is an open society or if its citizens are repressed; if it has an independent judiciary; or if it is ruled through a monarchy, dictatorship, or through freely-elected representatives and executives. Nor can it be determined if Morocco's interests are aligned with those of the United States, or if Morocco is active in obtaining information about our military or economic interests. Absent such information about Morocco, the record does not support a conclusion that the facts and circumstances in this case create a heightened risk of exploitation.

Additionally, the record does not support application of the disqualifying condition at AG ¶ 7(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*). Again, without more information about Applicant's interests in Morocco, about her relatives' employment or connections in Morocco, or about Morocco itself, it cannot be determined that there is a potential conflict of interest.

As to AG ¶ 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*), Applicant denied the allegation (SOR 1.e) about foreign financial interests. Thus, the burden remained on the Government to produce sufficient, reliable information to support that allegation.<sup>10</sup> Aside from Applicant's acknowledgment that she may have had a partial property interest in Morocco, and that she no longer holds the interest alleged, there is nothing in the FORM to support the SOR 1.e. Thus, AG ¶ 7(e) does not apply.

Finally, Department Counsel argues (FORM at 7) that Applicant's travel to Morocco in 2009, which was only alleged as a passport-related concern under Guideline C, SOR 1.b, supports application of the disqualifying condition at AG ¶ 7(i) (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*). There is no basis for this assertion. In and of itself, travel abroad is not disqualifying, although it may indicate the strength of Applicant's ties to a foreign country. Just as the Government did not establish that the mere presence of Applicant's siblings in Morocco presents a heightened security risk, it has failed to show how simply traveling to that country presents a heightened risk of exploitation. On balance, the Government has not established that Applicant's connections to Morocco disqualify her from holding a security clearance.

## **Personal Conduct**

The Government also alleged that Applicant deliberately falsified her answer to and SF 86 question about her possession of a foreign passport. Such conduct, if established, raises security concerns expressed at AG 15, as follows:

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 answered "no" when asked if she had ever held a foreign passport. The question is straightforward and not subject to misinterpretation under these circumstances, even if English is not Applicant's first language. Applicant has an

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<sup>10</sup> Directive, E3.1.14.

advanced education received in the United States, she has lived, worked and studied here since she was about 21. Thus, her explanation that she did not view Morocco as a foreign country does not make sense and is insufficient to account for her negative answer to the question at issue. All of the available information bearing on Applicant's intent when she answered that question shows that she intended to conceal her possession of a foreign passport. Such information requires application of the disqualifying condition at AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

Given the facts and circumstances of this case, of the mitigating conditions listed at AG ¶ 17, the mitigating conditions at AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*), AG ¶ 17(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*), and AG ¶ 17(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*) must be considered here.

However, there is no support for application of any of those mitigating conditions. Applicant did not make a good-faith effort to correct her false statement, and she has not shown that she was advised by anyone to withhold information. Further, making false statements to any agency of the United States concerning a matter within its jurisdiction is a violation of federal criminal law. More important, it is a fundamental breach of a basic tenet of the Government's personnel security programs. Thus, it cannot be considered minor. Applicant failed to present any information to otherwise explain her falsification. Accordingly, she has not mitigated the security concerns about her personal conduct.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline C. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 33 years old and presumed to be a mature, responsible adult. Available information shows only that she is a well-educated product of U.S. colleges, who has been steadily employed in a variety of businesses since at least 1998. There is no other information about her job performance, character, or trustworthiness. As such, available information is insufficient to overcome the doubts about her suitability for access raised by the Government's information. A fair and commonsense assessment<sup>11</sup> of all available information shows

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<sup>11</sup> See footnote 6, *supra*.



Applicant has not mitigated the security concerns raised by the Government's information.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.e:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge