



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



In the matter of:)	
)	
)	ISCR Case No. 10-03303
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

April 15, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the foreign influence concern that existed due to his family ties to Morocco. Clearance is granted.

On December 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline B (foreign influence). Applicant's response to the SOR was received by the DOHA on January 7, 2011. Applicant admitted all SOR allegations except that contained in subparagraph 1.a, and he requested a decision based on the written record without a hearing.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

Department Counsel prepared a File of Relevant Material (FORM) on January 9, 2011, which was mailed to Applicant on February 9, 2011. Applicant was notified he had 30 days from receipt of the FORM to submit his objections thereto or any additional information he wanted considered. Applicant acknowledged receipt of the FORM on February 15, 2011, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on April 11, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 46-year-old man who has been employed since September 2008 as a computer technician by a company currently providing subcontracting service to a defense contractor. He previously worked as a cab driver from September 2001 until September 2008. Applicant attended colleges in the United States from January until May 2002, and from July until September 2002, from which he received certificates in unlisted disciplines.

Applicant is a Moroccan citizen by birth. He immigrated to the United States in 1998, and he became a naturalized United States citizen in January 2004. Applicant had a Moroccan passport which expired in November 2004, that he has not renewed. He obtained a United States passport in July 2004.

Applicant married a Moroccan citizen in Morocco in August 2004. He met his wife while she was visiting her brother, Applicant's friend, in the United States. Applicant has a daughter who was born in the United States in 2005. Applicant's wife became a naturalized United States citizen in 2010. She works in the produce department of a grocery store.

Applicant's father is a 75-year-old retired farmer. He receives a state pension that is the equivalent of a United States Social Security pension. Applicant's mother is 75 years old. She has never worked outside the home and has no source of income other than her husband's pension. Both of Applicant's parents are citizens and residents of Morocco. Applicant has about monthly telephone contact with each of them. Applicant provides his parents with monetary support each month.²

Applicant has two brothers and four sisters who are citizens and residents of Morocco. He has two sisters who reside in France, and one sister who resides in Australia. Applicant's sister who resides in Australia is a Moroccan citizen. One of

² Applicant's statement, dated February 2, 2010, indicates he provides his parents and parents-in-law \$200 per month financial support. It is unclear from the statement if he provides \$200 per month to each of them or \$200 per month total to them.

Applicant's sisters who resides in France is a Moroccan citizen, and the other is a dual French and Moroccan citizen. Applicant has telephonic contact with each of his siblings that ranges from once or twice a year to as frequently as every three to four months.

Applicant's mother-in-law and father-in-law are citizens and residents of Morocco. Applicant has telephonic contact with his father-in-law about once a year, and with his mother-in-law about once every three to four months. Applicant's brother-in-law and sister-in-law are citizens and residents of the United States.

Applicant visited Morocco in 2000, 2004, and 2007. He stayed with his parents during those trips and visited with his siblings. The trips to Morocco ranged from 26 to 45 days in duration. In 2005, Applicant attended his sister's wedding in France and stayed there for seven days. Because he had not yet become a United States citizen, Applicant used his Moroccan passport for his 2000 travel to Morocco. He used his United States passport for all other foreign travel.

Moroccan law does not recognize the renunciation of Moroccan citizenship. When he was interviewed on March 27, 2009, Applicant adamantly insisted that his exclusive loyalty is to the United States and that he has severed his relationships with the Moroccan Government. He also expressed a willingness to renounce his Moroccan citizenship if he were allowed to do so.

U.S. Department of State publications provide the following information about Morocco:

FOREIGN RELATIONS

Morocco is a moderate Arab state which maintains close relations with Europe and the United States. . . . It contributes consistently to UN peacekeeping efforts on the continent.

Morocco is active in Maghreb, Arab, and African affairs. It supports the search for peace and moderation in the Middle East. . . .

Morocco was the first Arab state to condemn Iraq's invasion of Kuwait in 1990 and sent troops to help defend Saudi Arabia. Morocco maintains close relations with Saudi Arabia and the Persian Gulf states, which have provided Morocco with substantial amounts of financial assistance. Morocco has supported efforts to stabilize Iraq following the downfall of Saddam Hussein.

Morocco was among the first Arab and Islamic states to denounce the September 11, 2001 terrorist attacks in the United States and declare solidarity with the American people in fighting terrorism. Morocco has experienced terrorism at home as well. . . .

In addition to traditional security measures, King Mohammed VI has promoted significant initiatives to counter extremism and dissuade individuals from becoming radicalized. Each Ramadan, for example, the King hosts a series of religious lectures, inviting Muslim speakers from around the world to promote moderate and peaceful religious interpretations. (Background Note: Morocco, January 2010, p. 6-7)

U.S.-MOROCCAN RELATIONS

Morocco was the first country to seek diplomatic relations with the Government of the United States in 1777 and remains one of our oldest and closest allies in the region. Formal U.S. relations with Morocco date from 1787, when the two nations negotiated a Treaty of Peace and Friendship. Renegotiated in 1836, the treaty is still in force, constituting the longest unbroken treaty relationship in U.S. history. As testament to the special nature of the U.S.-Moroccan relationship, Tangier is home to the oldest U.S. diplomatic property in the world, and the only building on foreign soil that is listed in the U.S. National Register of Historic Places, the American Legation in Tangier (now a museum).

U.S.-Moroccan relations, characterized by mutual respect and friendship, have remained strong through cooperation and sustained high-level dialogue. King Hassan II visited the United States several times during his reign as King, meeting with Presidents John Kennedy, Lyndon Johnson, Jimmy Carter, Ronald Reagan, George H.W. Bush, and Bill Clinton. King Mohammed VI has continued his father's tradition; he made his first trip to the U.S. as King on June 20, 2000 and visited again in 2004. Prime Minister Driss Jettou also visited Washington in January 2004. Secretary of State Colin Powell traveled to Morocco in December 2004 to co-chair with Foreign Minister Mohamed Benaissa the first meeting of the G8-BMENA "Forum for the Future." In November 2009, Secretary of State Hillary Clinton visited Morocco to attend the sixth G8-BMENA Forum and met with King Mohammed VI.

As a stable, comparatively moderate Arab Muslim nation, Morocco is important for U.S. interests in the Middle East. Accordingly, U.S. policy toward Morocco seeks sustained and strong engagement and identifies priorities of economic, social, and political reform; conflict resolution; counterterrorism/security cooperation; and public outreach. In August 2007, the U.S. and Morocco signed a Millennium Challenge Compact totaling \$697.5 million to be paid out over five years. The Compact was designed to stimulate economic growth by increasing productivity and improving employment in high-potential sectors, such as artisanal crafts and fishing. (Background Note: Morocco, January 2010, p. 9)

SAFETY AND SECURITY: In March and April 2007, a series of terrorist bombings occurred in Casablanca, two of which simultaneously occurred outside the U.S. Consulate General and the private American Language Center. In 2003, a series of similar attacks in Casablanca targeted hotels and restaurants. The potential for terrorist violence against U.S. interests and citizens remains high in Morocco. Moroccan authorities continue to disrupt groups seeking to attack U.S. or Western-affiliated and Moroccan government targets, arresting numerous individuals associated with international terrorist groups. . . . (Morocco, Country Specific Information, July 15, 2010, p. 3)

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B (foreign influence) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of proof.⁶ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁷

Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

favorable clearance decision.⁹ No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

Applicant’s parents, parents-in-law, and many of his siblings are citizens and residents of Morocco. He maintains regular telephonic contact with each of these individuals and he has visited with most of them in Morocco during three trips he has taken to that country since 2000. Disqualifying Conditions (DC) 7(a): *contact with a foreign family member . . . or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*; and DC7(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* apply.

Applicant is a first-generation immigrant American citizen. He met his wife who was then a Moroccan citizen while she was visiting her brother in the United States. They married in Morocco and she thereafter immigrated to the United States and became a first-generation American citizen. Applicant and his wife have a daughter who was born in the United States and, thus, has become a second-generation American citizen.

Applicant has worked steadily since coming to the United States. He has attended two college sessions in the United States from which he earned certificates in

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

disciplines that are not identified in the record evidence. He has advanced his career from being a cab driver to working as a computer technician.

Applicant has resided in the United States since 1998. He has been a United States citizen since 2004. He has adamantly expressed his total and undivided loyalty to the United States. He allowed his Moroccan passport to expire without seeking to renew it after he became an American citizen. He has used his American passport for all foreign travel since he became an American citizen. Applicant has asserted his willingness to renounce his Moroccan citizenship if Moroccan law would recognize such a renunciation.

The length of Applicant's residency in the United States, the length of time he has been a United States citizenship, his work and educational pursuits in the United States, his adamant profession of loyalty to the United States, his willingness to renounce his Moroccan citizenship, and his wife and daughter's citizenship status, entitle him to application of Mitigating Condition (MC) 8(b): *there is no conflict of interest, . . . because . . . the individual has such deep and longstanding relationships in the U.S., that the individual can be expected to resolve any conflict of interest in favor or the U.S. interest.*

Morocco is a moderate Arab state which maintains close relations with Europe and the United States. Relations between the United States and Morocco are characterized by mutual respect and friendship. Those relationships remain strong through cooperation and sustained high-level dialogue, including visits by Moroccan Kings to Presidents of the United States that date back to President John F. Kennedy's term in office.

Morocco has been a friend of the United States since its beginning. It was the first country to seek diplomatic relations with the Government of the United States in 1777, and it remains one of closest allies of the United States in the region. Morocco was the first Arab state to condemn Iraq's invasion of Kuwait in 1990, and it has supported efforts to stabilize Iraq following the downfall of Saddam Hussein. Morocco was among the first Arab and Islamic states to denounce the September 11, 2001 terrorist attacks in the United States and declare solidarity with the American people in fighting terrorism.

Like many countries around the world, including the United States, Morocco has experienced terrorist attacks. Some of those attacks were directed against American interests and personnel in Morocco. In response to the continuing terrorist threat in Morocco, its authorities have disrupted groups seeking to attack U.S. or Western-affiliated and Moroccan government targets, and have arrested numerous individuals associated with international terrorist groups. Further, King Mohammed VI has promoted significant initiatives to counter extremism and dissuade individuals from becoming radicalized.

As the adjudicative guideline directs, adjudication of potential foreign influence concerns should consider the foreign country where Applicant's relatives reside and whether that country is known to target United States citizens to obtain protected information. There is absolutely no record evidence to indicate that Moroccan authorities have ever attempted to target United States citizens to obtain protected information or that they are likely to do so in the future. MC 8(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. applies.*

I have considered all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions. Having done so, I conclude Applicant has mitigated the foreign influence security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline B is decided for Applicant. It is clearly consistent with the national interest to grant Applicant a security clearance.

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-e: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

