DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	
	)	ISCR Case No. 10-04378
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence), C (Foreign Preference), and E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 4, 2009. On October 11, 2011, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it is clearly consistent with the national interest to grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guidelines B, C, and E. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on October 17, 2011; answered it in an undated document; and requested a hearing before an administrative judge. DOHA received the request on November 9, 2011. Department Counsel was ready to proceed on December 8, 2011, and the case was assigned to me on December 15, 2011. DOHA issued a notice of hearing on January 5, 2012, scheduling it for January 24, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I kept the record open until January 31, 2012, to enable Applicant to submit additional documentary evidence. He timely submitted AX H and I, which were admitted without objection. Department Counsel's comments regarding AX H and I are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on February 2, 2012.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Morocco. The request and the documents attached as enclosures were not admitted in evidence but are attached to the record as Hearing Exhibits (HX) II and III. I took administrative notice as requested. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.f and 3.a, and he denied the allegations in SOR ¶¶ 2.a-2.b and 3.b-3.c. I treated his answer to SOR ¶ 3.a, alleging falsification of his SCA, as a denial, because he asserted that he did not intentionally omit relevant information from his SCA. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old associate engineer employed by a federal contractor since November 2003. He has never held a security clearance.

Applicant was born in Morocco, where he completed high school and received an associate's degree in electrical engineering after two years of college. He came to the United States in May 1999. (GX 2 at 3; GX 3 at 4; Tr. 45.) While attending college in Morocco, he received several academic awards and recognition for a science project. (AX A-F.)

In September 2001, Applicant was hired as a technician by a company that manufactures radio wave amplifiers. The company had defense contracts, but Applicant did not have access to classified information. He enjoyed talking with the company engineers and asked them questions to learn more about the company's work. In October 2001, he made a copy of a schematic diagram of some amplifiers that he was working on. His manager fired him because he thought Applicant was asking his fellow engineers too many questions and had copied a schematic diagram without authority. When Applicant refused to leave the workplace, his manager punched him. Applicant

filed a civil lawsuit against the manager but later dropped it because he felt it was not worth the effort. (GX 3 at 5-7.) At the hearing, Applicant submitted a newspaper article reporting that his former manager who fired him had served seven years in prison for armed bank robbery, was on supervised probation at the time he fired Applicant, and was recently charged with murdering two armored car guards. (AX H.)

Applicant married a citizen of Morocco in September 2004. His spouse resides with him in the United States. She is a student and works part-time as an interpreter. (GX 3 at 9.) She intends to become a U.S. citizen. They have one child, born in March 2009, who is a U.S. citizen.

Before Applicant's marriage, he dated an American woman "on and off." After Applicant returned from a visit to Morocco in October 2004, he informed the American woman that he had married, and they agreed to remain friends and to stay in contact. In late 2004, Applicant called the American woman, but her current boyfriend answered the telephone. The conversation turned into an argument over Applicant's previous relationship with the woman. In 2005, the woman obtained a restraining order, prohibiting Applicant from any contact with her. Applicant hired a lawyer, appeared in court, and agreed to have no further contact with the woman, but the restraining order remained in effect until the summer of 2006. After Applicant applied for U.S. citizenship in May 2004, a friend of Applicant asked the woman to vacate the restraining order, because he thought it would interfere with Applicant's application for U.S. citizenship. The woman agreed and the order was vacated. (GX 3 at 32-34.)

Applicant was scheduled for a citizenship interview in 2004, but it was cancelled by immigration authorities. After hearing nothing for several months, Applicant began calling immigration officials and federal investigators, to no avail. He contacted members of Congress, without success. Finally, he hired a lawyer in 2007, who filed a lawsuit against the Federal Bureau of Investigation, the U.S. Customs and Immigration Service, and the Department of Homeland Security. Applicant did not appear in court and did not know what his lawyer had done to expedite his case. However, he received an invitation for an interview and was granted citizenship shortly thereafter in July 2008. GX 3 at 2, 36-37.)

When Applicant became a U.S. citizen, he legally changed his name, although he is known only by his birth name in Morocco. (GX 2 at 4; GX 3 at 2-3.) He kept his Moroccan passport and his Moroccan identification card after becoming a U.S. citizen, but he used his U.S. passport for all foreign travel. When he learned that his Moroccan passport and identification card raised security concerns, he destroyed them. (GX 2 at 8; GX 3 at 2; AX G.) I have taken administrative notice that Morocco considers all persons born to Moroccan fathers to be Moroccan citizens, even if they are naturalized citizens of another country.

Applicant purchased an apartment in Morocco for his mother in August 2004. Its estimated value in U.S. dollars is about $34,000. He made a $10,000 down payment and borrowed about $24,000. He also has a bank account in Morocco, with an average

balance of about $300, which he uses to make his mortgage payments on the apartment. His monthly payments are $250, and they are automatically deducted from his bank account. (GX 2 at 3; GX 3 at 20-21; Tr. 54-55.) He stays in the apartment when he visits his family. (Tr. 41.)

Applicant purchased a home in the United States in 2007 for about $112,000, and he owes about $94,000 on his mortgage. The home has declined in value to about $80,000. He has about $50,000 in his 401k retirement account, and about $6,000 in other miscellaneous assets. (GX 3 at 23; Tr. 55-56.)

Applicant's mother has a "green card" and spends much of her time living in the United States with Applicant. She has never worked outside the home. His father is deceased. His four brothers are citizens and residents of Morocco. One brother is a truck driver and lives in their mother's Moroccan apartment that Applicant purchased in 2004. Applicant has weekly telephone contact with this brother and his mother when she is in Morocco. Another brother is a student and lives in their mother's Moroccan apartment. Two other brothers live together in an apartment that his mother previously owned. One is unemployed and the other works intermittently. (GX 3 at 9-11; Tr. 45-52.)

Applicant's father-in-law and mother-in-law are citizens and residents of Morocco. His father-in-law is retired from private industry. His mother-in-law has never worked outside the home. He has telephonic contact with his in-laws on Moroccan holidays and visits them when he travels to Morocco, and they visit him when they travel to the United States. (GX 3 at 10.) Applicant's family members and in-laws are not connected to the Moroccan government or military forces, and they have not questioned him about his employment.

Applicant has traveled extensively on business for his employer and for pleasure. When Applicant submitted his security clearance application in June 2009, he responded affirmatively to question 20C, asking about travel outside the United States during the last seven years. The instructions on the application included: "Do not list travel under official U.S. Government business, but you must include any personal trips made in conjunction with official U.S. Government business." He disclosed travel to France in February 2007, Egypt in June 2006, and Morocco in April 2006. He also checked the box indicating "many short trips" to Egypt and Morocco. He did not disclose that he traveled to Morocco for pleasure from April to June 2003, to Canada for pleasure in January 2004, to Egypt for business in June 2004, to England for pleasure in December 2004, to Egypt for business in 2004 and 2005, to France for business in September 2006, to Germany and Belgium for pleasure in 2007, and to Canada for pleasure in 2007 and 2009.

Applicant denied intentionally falsifying his response to the travel question. He stated that he forgot about some of his pleasure trips, that he frequently combined business and pleasure travel, and that he did not fully understand that he was required to disclose the personal portion of combined business and pleasure travel. He thought that he was required to list each country once, and he did not understand that he was

required to separately list each trip to a country. (Tr. 64.) He fully disclosed his personal and business travel in an affidavit submitted to a security investigator on February 3, 2011. Based on his description of the trips, which involved military and technological assistance to U.S. allies, the travel alleged in SOR ¶ 3.a(3) and 3.a(5)-(7) may have been official U.S. Government business in connection with military assistance to U.S. allies and not required to be disclosed. (GX 3 at 25-32.)

On the same SCA, Applicant answered "No" to question 28, asking if, during the last seven years, he had been a party to any civil court actions not listed elsewhere on the application. He did not disclose the restraining order in 2005 and his lawyer's lawsuit to expedite his immigration interview in 2007. He denied intentionally omitting information, and explained that he did not know that these two events were covered by the question. (GX 3 at 37.) He testified that he did not list the restraining order because it was vacated. (Tr. 43.) He testified he did not understand the question about civil actions. Regarding his lawsuit to expedite his immigration interview, he explained, "I didn't go to court, I just hired a lawyer to get my citizenship." (Tr. 42.) He further explained: "I did not want to sue the government. I want my citizenship. . . .Suing in [Morocco] is something bad." He did not learn until recently, after he had submitted his SCA, that his lawyer expedited his interview by filing a lawsuit against agencies of the United States. (Tr. 89-90.)

Applicant testified that he did not try to hide anything on his SCA. He explained: "I know the government is smart, they know everything about anyone know (sic), the technology we live on. You can put my security, you know everything about me, I would never hide anything about me." (Tr. 43-44.)

Applicant's director of electrical engineering, who has known him for eight years, described him as conscientious, hard working, and reliable. He states that Applicant is an excellent ambassador in the Middle East for the company and a fine representative of the United States. He says that the decision to hire Applicant was "one of the best decisions I have made." (AX I(1).)

Applicant's direct supervisor, who has known him for eight years, described him as mature, dedicated, and a person of high integrity. He states, "Very few employees are so honest and dependable." (AX I(2).)

A member of the human resources office at Applicant's company considers him "a dedicated employee and a friend," respected for his expertise, knowledge, and professional demeanor. (AX I(3).) Two of his program managers consider him conscientious, reliable, proactive, considerate, and respected by his peers. (AX I(4) and (5).)

Applicant testified enthusiastically about his job and his life in the United States. He concluded his testimony with the following comments:

> I don't care about my home, where I was born. A lot of people, a lot of my friends get mad about this. Why? I say, look, I love my country, as a country. But I love this country more than anything. Because I see the difference. I live there as a poor person, and I came here, and I have opportunity, I work, I have a good job, and I have a good life, and I have [a] house here, and I have a house in Morocco, and I have [a] wife, I have kids, one child. And I live a normal life, in this situation, all over the world right now. People don't have jobs. Maybe they have more education than I have, and they don't have jobs.
>
> I thank, I always thank the United States. And, for today, I'm happy to be here. Because I can see how the system in the United States works, with loyalty, with freedom, and you can say anything you want, with respect, to everyone. That is the privilege about this country. Because I see the difference. A lot of people they don't know this. I know it, because I live, and I travel, and I see how people live.

(Tr. 96-97.)

I have taken administrative notice that Morocco is a constitutional monarchy with a bicameral parliament and an independent judiciary. It is a moderate Arab state that maintains close relations with Europe and the United States. Morocco was the first country to seek diplomatic relations with the United States in 1777, and it remains one of our oldest and closest allies in the region. U.S.-Moroccan relations are characterized by mutual respect and friendship. Morocco was the first Arab state to condemn Iraq's invasion of Kuwait in 1990 and sent troops to help defend Saudi Arabia. It was among the first Arab and Islamic states to denounce the September 11, 2001 attacks in the United States and to declare solidarity with Americans in fighting terrorism. It is a key partner in promoting security and stability in the region. There is no evidence that Morocco targets the United States for military, scientific, or economic intelligence.

I have also taken administrative notice that Morocco has encountered terrorist violence targeting U.S. and Western interests as well as Moroccan government facilities. Moroccan-U.S. cooperation in counterterrorism efforts has been strong, and the Moroccans have successfully disrupted numerous terrorist cells and have initiated an effective system for countering terrorist financing. Moroccan authorities are concerned about the influence of Al-Qaida on Moroccan extremists and the number of veteran Moroccan jihadists returning from Iraq to conduct terrorist attacks in Morocco.

Finally, I have taken administrative notice that there have been reports of torture and other abuses by various Moroccan security forces. Abuses have included arbitrary arrests, incommunicado detentions, and impunity of police and security forces.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching 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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "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. Thus, a decision to deny a security clearance is merely an indication 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 therein and an applicant's security suitability. *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[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

The SOR alleges that Applicant owns an apartment and maintains a bank account in Morocco (SOR ¶¶ 1.a and 1.b) It also alleges that his mother, four brothers, wife, mother-in-law, and father-in-law are citizens and residents of Morocco (SOR ¶ 1.c-1.f). The security concern under this guideline is set out in 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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). We know that friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider

any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Four disqualifying conditions under this guideline are relevant:

> 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;
>
> 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;
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> AG ¶ 7(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
>
> 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.

The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002).

Applicant has about $10,000 invested in his Moroccan apartment. Considering all his assets, including those in the United States, his investment in Morocco is "substantial" within the meaning of AG ¶ 7(e).

AG ¶¶ 7(a), 7(d), and 7(e) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Morocco is a staunch ally of the United States, with a vigorous and effective counterterrorism program. Nevertheless, the presence of Applicant's immediate family members and his wife's immediate family members in Morocco, the activities of terrorist cells in Morocco, and the concern about Moroccan jihadists returning from Iraq are sufficient to establish the "heightened risk" required for AG ¶¶ 7(a), 7(d), and 7(e), and

the potential conflict of interest in AG ¶ 7(b). Thus, I conclude that all four disqualifying conditions are established.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). The threat of terrorism and potential for coercion against Applicant's immediate family members and in-laws preclude application of this mitigating condition.

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 8(b). Applicant has lived in the United States for almost 12 years, worked for his current employer for more than eight years, and owns a home in the United States. His child is a U.S. citizen. His wife intends to become a U.S. citizen. His mother is a permanent resident of the United States and spends much of her time in the United States. He spoke passionately, sincerely, and credibly at the hearing about his love for the United States. Even though he has family members, in-laws, and property of substantial value in Morocco, I am satisfied that he will resolve any conflict of interest in favor of the United States. Accordingly, I conclude that this mitigating condition is established.

Security concerns under this guideline also may be mitigated by showing that "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." AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has frequent contact with his mother, one brother, father-in-law, and mother-in-law. He has infrequent contact with his other brothers, but he has not rebutted the presumption that his family contacts are not casual. This mitigating condition is not established.

Security concerns arising from financial interests can be mitigated if "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." AG ¶ 8(f). Because of the value of Applicant's property in Morocco, he could be faced with a conflict of interests. Thus, I conclude that this mitigating condition is not fully established. However, I am satisfied that he would resolve the conflict in favor of the United States, for the reasons set out in the above discussion of AG ¶ 8(b).

Guideline C, Foreign Preference

The SOR alleges that Applicant possesses a national identity card and an active passport from Morocco (SOR ¶¶ 2.a and 2.b). The concern under Guideline C is 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." AG ¶ 9. A disqualifying condition may arise from "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen," including but not limited to "possession of a current foreign passport." AG ¶ 10(a)(1).

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

The security concern under this guideline is not limited to countries hostile to the U.S. "Under the facts of a given case, an applicant's preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests." ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

Morocco considers Applicant a Moroccan citizen, solely because his father was Moroccan. On the other hand, Applicant actively sought U.S. citizenship and used only his U.S. passport for foreign travel after he became a citizen. I conclude that the mitigating condition in AG ¶ 11(a) ("dual citizenship is based solely on parents' citizenship or birth in a foreign country") is established.

Applicant never used his Moroccan passport after becoming a U.S. citizen, and he destroyed it when he learned that it raised security concerns. He continued to use his national identity card after becoming a U.S. citizen, but the evidence indicates that the card confers no privileges other than to document his Moroccan identity number. In this respect, it is akin to a Social Security card. To the extent that his continued possession of the national identity card constituted an exercise of Moroccan citizenship, he has mitigated the security concern by destroying it. I conclude that the mitigating condition in AG ¶ 11(e) ("the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated") is established.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by not disclosing the full extent of his foreign travel (SOR ¶ 3.a), and that he falsified his SCA by not disclosing the restraining order that was issued against him in 2005 and the civil lawsuit he filed against U.S. Government agencies in 2007 (SOR ¶ 3.b). It also alleges that he was fired

in 2001 for asking too many questions and copying diagrams for a project that was not assigned to him (SOR ¶ 3.c).

The concern under this guideline is set out in AG ¶ 15:

> 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.

The disqualifying condition relevant to the two allegations of falsification is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . ." AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant was unfamiliar with the security clearance process as well as the United States legal system when he executed his SCA. He had sued his employer in 2001 for wrongful termination of employment, but his experience with the restraining order and the action to expedite his citizenship application was different. He believed that suing someone was a "bad thing," which was why he sued the former supervisor who punched him. On the other hand, the issue regarding the restraining order was resolved amicably. He was unaware that his lawyer had filed a lawsuit to expedite his citizenship interview until long after he submitted his SCA. I found his explanations for not disclosing the restraining order and the legal action to expedite his citizenship application plausible and credible.

I also found Applicant's explanation for not listing all his foreign travel plausible and credible. It is unclear whether some of his travel as an employee of a federal contractor might qualify as official U.S. Government travel. He did not understand that each trip to each country must be listed separately. His confusion was demonstrated when he disclosed only a single trip to each country but checked the box indicating multiple trips. He did not understand that he was required to report personal travel that was combined with business travel. The frequency of his travel made it difficult for him to remember each and every trip. He was not as careful as he should have been, because he did not fully appreciate the significance of his answers. The countries that he did not disclose (Canada, England, Germany, and Belgium) are less significant from

a national security perspective than the countries he disclosed (France, Egypt, and Morocco.) He disclosed his foreign travel in great detail during his follow-up security interview. I am satisfied that Applicant did not intentionally falsify his SCA, and I conclude that AG ¶ 16(a) is not established.

The disqualifying conditions relevant to Applicant's firing from his job in 2001 are:

> 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 . . . a pattern of dishonesty or rule violations; and
>
> AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant admitted that he was fired, but the only evidence of the circumstances of his firing is his February 2011 affidavit. He admitted questioning other engineers about their projects, but explained that he questioned them because he wanted to learn more about his job. The manager who fired him was a convicted felon on probation, who subsequently was arrested for another felony. Applicant's sworn statement that he copied the diagram because it pertained to his assigned project is uncontroverted. I conclude that AG ¶ 16(d) and 16(e) are raised by the fact that he was fired, but the allegations that he improperly questioned other engineers and copied diagrams without authority are not supported by substantial evidence.

Security concerns raised by personal conduct may be mitigated if "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. AG ¶ 17(c). A termination for cause is not "minor" within the meaning of this mitigating condition. However, Applicant was fired more than 10 years ago and has since gained a reputation for being an outstanding employee. I conclude that AG ¶ 17(c) is established.

Security concerns raised by personal conduct also may be mitigated if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." AG ¶ 17(e). This mitigating condition is established because Applicant has fully disclosed the circumstances under which he was fired.

Whole-Person Concept

Under AG ¶ 2(c), 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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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.

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

Applicant is a mature, highly respected, talented engineer. He was candid, sincere, and credible at the hearing. His enthusiasm for his job and his loyalty to the United States were obvious from his words and his demeanor.

After weighing the disqualifying and mitigating conditions under Guidelines B, C, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegations of falsifying his SCA, and he has mitigated the security concerns based on foreign influence, foreign preference, and personal conduct. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Paragraph 3, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 3.a-3.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge