



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



In the matter of:)
)
-----) ISCR Case No. 11-14530
)
Applicant for Security Clearance)

Appearances

For Government:
Melvin A. Howry, Esquire, Department Counsel

For Applicant:
Brian P. Cruz, Esquire
McKenna, Long & Aldridge LLP

June 10, 2013

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on May 25, 2011. (Government Exhibit 1.) On August 31, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence). The action was taken 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 1, 2012, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on December 7, 2012. This case was assigned to me on December 14, 2012.

DOHA issued notices of hearing on January 17, and January 18, 2013. I convened the hearing as scheduled on March 4, 2013. The Government offered Government Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through H, which were also received without objection. DOHA received the transcript (Tr.) of the hearing on March 13, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Democratic and Popular Republic of Algeria (Algeria). (Tr. 10-13.) The request and the attached documents were not admitted into evidence, but are included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 58, married, and has a post-graduate degree. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment in the defense industry. In his Answer to the SOR, Applicant admitted the factual allegations in subparagraphs 1.a and 1.b. He denied the central allegations in Paragraph 1 itself. He also provided additional information to support his request for a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability, or untrustworthiness on the part of Applicant.

Applicant is a naturalized American citizen from Algeria, born in 1955. After going to undergraduate school in Algeria, Applicant moved to France in 1978 to continue his studies. While in France, he met his wife, who worked for the United Nations in Switzerland. Applicant's wife is a native-born American citizen. They were married in 1983. They have three native-born American children. His children do not speak Arabic, none of them have been to Algeria, and none of them have any plans to visit Algeria in the future. (Tr. 26-27, 36-41.)

Applicant emigrated to the United States in 1982, just before he was married. He then went to graduate school in the U.S. He has lived permanently in the United States since that time, except for two years of mandatory military service in Algeria between

1986 and 1988. (Tr. 28-32.)¹ He became an American citizen on June 22, 1990. (Government Exhibit 1.) Applicant has been employed in the defense industry almost continually since 1993, and has also held a security clearance since 1993, without incident. He began work for his present employer in June 2008. (Tr. 62-65; Government Exhibit 1.)

With the exception of one sister, his immediate family members all live in the United States. Applicant's mother is a citizen of the U.S. (Tr. 33-34.) His father was a victim of the Algerian civil war in 1992. Applicant has four brothers and four sisters. As stated, one sister is a citizen of Algeria and lives there. (SOR 1.a.) She and her husband are medical professionals in Algeria, as are their three children. They applied for Permanent Residency status in the United States approximately seven years ago and are awaiting approval of the petition. He talks to his sister two or three times a year by telephone. His sister visited Applicant in the U.S. about eight years ago. (Tr. 43-48.)

Two of the remaining sisters are U.S. citizens, and the third has Permanent Residency status. (Tr. 57-59.) Three of Applicant's brothers are American citizens. (Tr. 59-60.) The fourth has Permanent Residency status. (SOR 1.a.) This fourth brother received his Green Card five or six years ago, and has recently applied to become an American citizen. At the time the SOR was issued he was living in Algeria. He resides in the U.S. now, not in Algeria. (Tr. 48-50, 52-53.)

The SOR alleges in subparagraph 1.b that one of Applicant's brothers resides in Algeria, although he is an American citizen. At the time the SOR was issued that was true. This brother now lives permanently in the U.S., but travels to Algeria for business. (Tr. 54-55.)

Applicant is knowledgeable about his security responsibilities, having taken the required courses provided by his employer. (Applicant Exhibit G; Tr. 56, 67, 71.) He would respond appropriately if any member of his family were approached concerning Applicant's employment. (Tr. 48.) (See Applicant Exhibit H.)

Including his three children, as well as nieces and nephews, 22 of the 29 members of Applicant's immediate family are either American citizens or Permanent Residents of the U.S. None of Applicant's family desires to remain in Algeria. (Applicant Exhibit E; Tr. 61-62.)

Applicant has not been to Algeria since 1992 and has no desire or intention to travel there in the future. (Tr. at 33-36, 81.)

¹Applicant's wife lived in Algeria with Applicant during this time. She was employed by the American embassy in Algeria.

Applicant has contacts with Algeria. Accordingly, it is appropriate to discuss the situation in Algeria at this time.² Algeria is a multi-party state in northern Africa. It endured a multi-year civil war in the 1990s. Even though the terrorist situation in Algeria has improved markedly from its high of more than 150,000 deaths in 1990, it continues to pose a threat to the safety and security of U.S. citizens. Algeria is now considered a source of international terrorists, and many Algerian terrorists have been arrested in counter-terrorism operations in Europe and the United States. Human rights problems for the government in Algeria include restrictions on freedom of assembly and association, inability of citizens to change their government, and the failure to account for disappearances. Other human rights concerns were reports of unlawful killings, overuse of pretrial detention, poor prison conditions, abuse of prisoners, lack of judicial independence, and widespread corruption. The State Department has warned U.S. citizens of the risk of travel to Algeria.

On the other hand, there has been a growing relationship between the United States and Algeria. Since the September 11, 2001, terrorist attacks in the United States, contacts in key areas of mutual concern, including law enforcement and counterterrorism cooperation, have intensified. Cooperation between the Algerian and U.S. militaries continues to grow. Exchanges between both sides are frequent, and Algeria has hosted senior U.S. military officials. The United States and Algeria have also conducted bilateral naval and Special Forces exercises.

Mitigation

Applicant has substantial assets in the United States. He has a diversified portfolio that includes considerable real property, investments, and retirement accounts. He estimates his net worth at over one million dollars. (Applicant Exhibits G through H; Tr. 87-88, 92.)

Applicant submitted declarations and other documents in support of his request for a security clearance. Applicant Exhibit A is a letter from the Vice President for International Business Development of Applicant's employer. This official is a retired senior officer in the U.S. military, who had substantial command experience during Operation Enduring Freedom. He has known Applicant for four years. He states that Applicant is a man of "unwavering integrity." This person goes on to say, "[Applicant] is a loyal American who is dedicated to our country. The fact that he has family members who are citizens of and residing in Algeria does not raise any loyalty concerns to me." He concludes, "Based on the high level of trust that I have in [Applicant], his propensity to follow the rules, and his excellent work ethic, I would fully recommend [Applicant] for renewal of his security clearance."

Additional declarations show that Applicant is a highly respected expert in his field, and that he has provided valuable services to the defense efforts of the United

²All of the following statements are supported by the documents submitted by Department Counsel in support of his request for administrative notice.

States. His direct and second line supervisors believe him to be an honest man, a loyal and committed American, and recommend him for a security clearance. (Applicant's Exhibits B and C.) (See Applicant Exhibit F.)

Applicant testified about his feelings concerning the United States. "America is my home and my country." (Tr. at 26.) (See Applicant Exhibit D.) He would support the United States whole-heartedly in any conflict with Algeria. (Tr. 75.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who is granted access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it

grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's situation and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that Applicant has contacts with Algeria (Guideline B).

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled 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.

Almost all of Applicant's immediate family lives in the United States. Most of them are American citizens, including his mother. His wife and children are native-born American citizens. He has one sister who lives in Algeria with her family, and is an Algerian citizen. She and her husband applied for U.S. Permanent Resident status years ago, and are only awaiting approval. In addition to his American family, Applicant

has considerable financial holdings in the United States. I have also considered the information concerning the situation in Algeria, which was provided by Department Counsel in his Administrative Notice documents.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case:

AG ¶ 7(a) contact with a foreign family member . . . 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

(b) connections to a foreign person . . . 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 . . . by providing that information.

On the other hand, Applicant has provided compelling evidence to show that the following Mitigating Condition also applies to this particular case, given his background:

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

The evidence shows that Applicant has been a successful member of the defense industry for almost 20 years. He has been a loyal and upstanding American citizen for over 20 years. Since 1993 he has put his abilities to work in the defense industry, as shown by the statements in Applicant Exhibits A, B and C. The statement in Applicant Exhibit A, from a former senior officer and major component commander in the United States military, is particularly compelling. Applicant is respected by his family, friends, and colleagues. His connections to the United States are deep and longstanding. Under the facts of this case, including the whole-person concept as further described below, the presence of his one sister in Algeria does not have current security significance.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. This particular Applicant has been extremely forthcoming with the Government. He has shown himself to be trustworthy, and a person who shows good judgment. His current foreign connections are not of a type to cause security issues. Applicant has shown that he is knowledgeable about security rules and is willing and able to follow them. Based on his actions and testimony, as well as the statements of others, I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his foreign connections. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge