



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00507

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

03/09/2018

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant has not presented sufficient information to mitigate security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 2) On May 3, 2017, Applicant provided information in response to interrogatories sent to him by the Defense Office of Hearings and Appeals (DOHA). On May 3, 2017, Applicant participated in a personal subject interview (PSI) by a security investigator from the Office of Personnel Management (OPM). (Item 3). After reviewing the responses to the interrogatory and considering the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On July 21, 2017, a Statement of Reasons (SOR) was issued to Applicant by DOD detailing security concerns for foreign influence under Guideline B. (Item 1) 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 in the DOD on June 8, 2017.

Applicant answered the SOR on July 21, 2017. (Item 1) He admitted the four allegations under Guideline B with explanations. The allegations detailed concerns based on family members who are residents and citizens of Algeria. Department Counsel submitted the Government's written case on October 5, 2017. (Item 5) Applicant received a complete file of relevant material (FORM) on October 27, 2017, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. I was assigned the case on March 9, 2018.

Procedural issues

Department Counsel requested in the FORM that I take administrative notice of relevant facts concerning Algeria. The request and supporting documents are attached to the FORM as Item 4. Applicant did not object to the request or the facts. I will take administrative notice as requested. The facts concerning Algeria that I administratively find are set out below in my decision.

Applicant was advised in the FORM that the summary of the PSI (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the administrative judge could determine that he waived any objection to the admissibility of the PSI summary. In his response to the FORM, Applicant did not raise any objection to the PSI. Since he did not raise any objection to consideration of the PSI, I have considered information in the PSI in my decision.

Findings of Fact

I reviewed the case file and the pleadings, and make the following findings of fact. Applicant was born in Algeria in June 1971. He received his bachelor's degree from a university in Algeria in 1993. He immigrated to Canada in 1997 for employment and obtained Canadian citizenship and a Canadian passport because he was living and working in Canada. He retained his Algerian citizenship to facilitate his travel to Algeria. He received a master's degree from a Canadian university in 2001. He entered the United States in 2001 for employment, and he became a naturalized U.S. citizen in July 2006. He was not required to renounce either his Algerian or Canadian citizenship, so he maintains all three citizenships. He retained his Canadian citizenship because his three children were born in Canada and the children have multiple citizenships. He retains his Algerian citizenship because of his family connection, his birth in Algeria, and to ease his travels to Algeria. Since entering the United States, he has been employed by two United States aerospace companies as an aviation engineer. He received a U.S.

passport and used this passport for his travels except for his travels to Algeria. In addition to his U.S. passport, he possesses an expired Canadian passport and an Algerian passport. Applicant married in July 2002. He has three children all born in Canada but now U.S. citizens. His wife and children have multiple citizenships in Algeria, Canada, and the United States. (Item 2, e-QIP, dated December 2, 2015; item 3, PSI, dated May 3, 2017, at 4)

The SOR alleges, and Applicant admits, that he has a brother (SOR 1.a) and sister (SOR 1.b) who are citizens and residents of Algeria; a brother who is a citizen of Algeria and Canada but resides in Algeria (SOR 1.c); a mother-in-law who is a citizen and resident of Algeria (SOR 1.d); and that he owns land in Algeria valued at \$95,000. (SOR 1.e) (Item1)

In the PSI, Applicant told the security investigator that he obtained a U.S. passport after becoming a U.S. citizen for travel purposes. He has used the passport since then each time he traveled outside the U.S. He obtained the Canadian passport when he applied for and received Canadian passports for his children. The Canadian passport expired in October 2013. He has never used the Canadian passport and does not plan to renew it. He obtained his latest Algerian passport in December 2014, and it does not expire until December 2024. He uses it to travel to Algeria. He plans to renew the passport when it expires.

Applicant's wife was born in Algeria, but is now a U.S. citizen. She does not work outside of the home. His mother is an Algerian citizen who is a resident alien in the United States. His mother is not employed outside her home. His father is deceased. His mother-in-law is a housewife and a citizen and resident of Algeria. She visited Applicant and his wife in the United States in 2009. He sees his mother-in-law when he visits Algeria. He talks to her infrequently when she calls his wife. His father-in-law is deceased.

Applicant has a sister and brother who are both citizens and residents of Algeria. He has another brother who is a resident of Algeria but has dual Algerian and Canadian citizenship. He talks to his siblings in Algeria periodically by phone and sees them annually when he visits Algeria. He has another brother who is a resident of Canada and a dual citizen of Canada and Algeria. Applicant has quarterly contact with this brother in person or by telephone. He has a sister who is a housewife and a citizen and resident of the United States. (Item 3, PSI at 6)

Applicant told the security investigator in the PSI that he purchased a vacant lot in Algeria in October 2011 with plans to build a small house on the property for retirement purposes. He is the sole owner of the property and had the financial ability to purchase it. The property is not important to his overall financial situation. (Item 3, PSI at 6)

Algeria is a multiparty republic with a president as head of government elected by the people for no more than two five-year terms. The U.S. established diplomatic relations with Algeria in 1962, but Algeria severed relations with the United States in

1967 during the Arab-Israeli war. Diplomatic relations were reestablished in 1974, and Algeria is now a strategically located and capable partner with the United States. Algeria and the United States exercise strong diplomatic, law enforcement, and security cooperation.

Even though the terrorist situation in Algeria has improved markedly, it continues to pose a threat to safety and security for U.S. citizens. Al-Qaeda has used suicide attacks against people, buildings, and facilities. There were 62 such attacks in 2015, and at least 36 terrorist attacks in 2016. The U.S. State Department has warned of a potentially high risk of terrorism and kidnappings against U.S. citizens.

The most significant human rights violations are restrictions on the freedom of assembly and association, lack of judicial independence and impartiality, and limits on freedom of the press. There is also excessive use of force and torture by police, widespread corruption, societal discrimination, and violence against women. The U.S. State Department warns U.S. citizens of the risks of travel to Algeria and the need to avoid overland travel in Algeria.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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.

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.

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. . . ." The

applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks 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. 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 of potential, rather than actual, risk of compromise of classified information.

Analysis

Foreign Influence

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interest or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interests is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism. (AG ¶ 6)

Because of the threat of terrorism, violence, and human rights abuse in Algeria, Applicant's family members in Algeria are a security concern, raising the following Foreign Influence Disqualifying Conditions under AG ¶ 7:

- (a) contact, regardless of method, 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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be

inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family member must be considered. The foreign influence security concern 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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. 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 is at risk of coercion, persuasion, or duress.

Applicant has contact with his siblings and his mother-in-law who are residents and citizens of Algeria. Applicant's relatives in Algeria have a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant because of the threat of terrorism and human rights violations in Algeria.

I considered Foreign Influence Mitigating Conditions under AG ¶ 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 United States;

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

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

There is a rebuttable presumption that a person has ties of affection for or obligation to immediate family members. Applicant has contact with his family members in Algeria by phone and yearly visits. This level of contact is not casual or infrequent, and indicates that Applicant's sense of loyalty to the family members is high rather than minimal. His purchase of land in Algeria with intent to build a house on the land to use in retirement is further evidence that his connection to his siblings in Algeria is not casual.

Applicant's family members in Algeria can place him in a position to have to choose between the interest of the relatives and the interests of the United States. He has not presented sufficient information to establish that his connection and loyalty to the United States is so deep and longstanding that he can be expected to resolve any conflict of interest in favor of United States interests. He has closer and deeper ties to Algeria. He was born in Algeria, and he visits Algeria yearly. He has phone contact with his siblings and mother-in-law in Algeria and sees them when he visits Algeria. He owns property in Algeria with plans to build a house to use in retirement. He left Algeria for better employment opportunities and settled in Canada before moving to the United States. All of his education was in Algeria, except for a master's degree he received in Canada. He stayed in Canada about four years, and his children were born there. He and his immediate family members maintain dual citizenship with Canada. He saw an opportunity for better employment so he came to the United States in 2001. He became a U.S. citizen in 2006. He and his immediate family now have citizenship in three countries, Algeria, Canada, and the United States. He travels on a U.S. passport except for his trips to Algeria. He has not established and has not met his heavy burden to show that his relationships with his family members in Algeria are not a security concern. I conclude Appellant has not mitigated security concerns for foreign influence.

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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that the presence of Applicant's family members in Algeria creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion on Applicant.

The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to

classified information. I considered that Applicant immigrated to the United States for better employment and he and his family became U.S. citizens as soon as they could. However, Applicant did not present sufficient information to establish that his connection and loyalty to the United States is so deep and longstanding that he can be expected to resolve any conflict of interest in favor of United States interests. His connections to Algeria increases the probability that Applicant will not recognize, resist, or report any attempts by a foreign person or entity to coerce or exploit him. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. The protection of the national security is the paramount consideration. For all these reasons, I conclude Applicant has not mitigated foreign influence concerns based on his family members in Algeria. Access to classified information is denied.

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: AGAINST APPLICANT

Subparagraphs 1.a – 1.e: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge