



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



In the matter of:)
)
) ISCR Case No. 14-03347
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: Thomas G. Coale, Esq.

02/29/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant surrendered his Egyptian passport and mitigated the foreign preference security concerns. He failed to submit sufficient evidence to fully mitigate the foreign influence security concerns under Guideline B. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on December 27, 2013. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant or deny Applicant's eligibility for a clearance. On August 28, 2014, the DOD issued him a Statement of Reasons (SOR) alleging security concerns under Guideline C (foreign preference) and Guideline B (foreign influence).¹ Applicant answered the SOR on September 22, 2014, and requested a hearing before an

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

administrative judge. The case was assigned to me on July 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued the first notice of hearing on July 31, 2015, scheduling a hearing for September 2, 2015. The hearing was delayed and a second hearing notice was issued on September 16, 2015, convening a hearing on October 5, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on October 13, 2015.

Procedural and Evidentiary Rulings

Applicant testified and offered exhibits A through E. The Government offered exhibits (GE) 1 through 3. Both GE 2 and AE A concern requests for me to take administrative notice of facts about the government of Egypt. They were marked and included in the record and were considered by me in my decision-making process, but they were not admitted into evidence. GE 1 (Applicant's discovery letter) was also marked and included in the record, but not admitted into evidence. Neither side objected and I took administrative notice of facts concerning the government of Egypt. GE 1 and AE B through E were admitted without objections.

Findings of Fact

Applicant denied the sole Guideline C allegation. He admitted the Guideline B factual allegations in SOR ¶¶ 2.a through 2.c. His admissions are incorporated as findings of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 38-year-old aerospace engineer employed by a federal contractor. He has never been married and has no children. Applicant was born, raised, and educated in Egypt. He graduated from an Egyptian high school in 1995, and received his bachelor's degree from an Egyptian university in May 2000. He entered the United States in August 2000. From August 2000 to May 2005, Applicant attended a U.S. university and earned a doctorate's degree.

Applicant worked as a graduate student research assistant between 2000 and 2005. He worked as an intern for private U.S. companies in 2002 and 2004. He worked as a postdoctoral associate for a U.S. university during part of 2005-2006; an affiliate professor between August 2011 and May 2012; an assistant research professor from October 2011 to July 2013; and as a senior faculty fellow from July 2011 to July 2013. He was hired by his current employer, a federal contractor, in July 2013.

Applicant became a naturalized U.S. citizen, and was issued a U.S. passport in September 2013. Applicant disclosed in response to questions on his 2013 SCA (Section 10 – Dual/Multiple Citizenship Information) that he was in possession of a current Egyptian passport that was issued to him in June 2011, which expires in June 2018. In his 2013 SCA, Applicant claimed dual citizenship with Egypt and the United States since September 2013. He stopped using his Egyptian passport when he

became a U.S. citizen and had used his U.S. passport exclusively since then. Applicant also offered to renounce his Egyptian citizenship if required.

Applicant was not aware that his possession of the Egyptian passport would create a security concern until he received the SOR. On September 22, 2014, Applicant surrendered his valid Egyptian passport to his facility security officer (FSO) with the understanding that it would not be returned to him. The next day, he also surrendered other expired Egyptian passports. (AE B)

Applicant's parents are citizens and resident of Egypt. He speaks with them on a daily basis over the phone or the internet. His father is 69 and his mother is 66. He also maintains irregular contact with extended relatives (aunts, uncles, and cousins). In 2015, Applicant submitted an application for his parents to become permanent residents of the United States. Apparently, the application was accepted and it is being processed. (AE C and D)

Applicant's sister is a 34-year-old Egyptian citizen currently residing in the United States on a student visa. She entered the United States in 2006, and has been working on her post-doctoral degree at a U.S. university. She applied to become a permanent resident of the United States.

Applicant stated that he never served in the Egyptian military, intelligence services, or had any connection to any Egyptian government agency. He explained that he was exempt from military service. Applicant averred that after he became a naturalized U.S. citizen, he never had any contact with the Egyptian government. He claimed his allegiance is only to the United States, he stated he has no allegiance to Egypt or any other country.

Applicant claimed that all of his financial interests are in the United States and that he has no foreign financial assets. He presented no evidence to show that he owns property or any other financial interests in the United States. Before becoming a U.S. citizen, Applicant voted in Egyptian elections. After becoming a U.S. citizen, Applicant has not voted in any Egyptian elections. His last travel to Egypt was in March 2013, before he became a U.S. citizen.

I take administrative notice of the following facts concerning Egypt and its relations with the United States:

The United States and Egypt share a relationship based on mutual interest in Middle East peace and stability, revitalizing the Egyptian economy, and strengthening trade relations, and promoting regional security. Egypt has been a key U.S. partner in ensuring regional stability and on a wide range of common security issues, including Middle East peace and countering terrorism.

Egypt is the most populous country in the Arab world. In the past, it has been a strategic partner of the United States and the two countries have enjoyed a strong

friendly relationship. The United States is facing a series of challenges stemming from dramatic changes in Egypt.

On July 3, 2013, the Egyptian military ousted former President Muhammad Morsi from power. In August 2013, the military-backed government began a violent police crackdown against Morsi's Islamist supporters, which include members of the Muslim Brotherhood. Since then, Islamic radical groups have waged an insurgency against the security services. Militants from Al-Qaeda groups have attacked police, army, and government facilities, employing terrorist and guerilla warfare tactics.

Political protests and demonstrations have turned violent. There are instances of instability, public disorder, and extremist activity in Egypt. The U.S. State Department issued a travel alert to U.S. citizens traveling to or living in Egypt about the continuing possibility of political and social unrest, and of incidents which led to recent violence. Due to the political climate, there is a potentially more permissive operating environment for criminal and terrorist groups, including Al-Qaida, which the U.S. State Department designated a foreign terrorist organization.

Human rights abuses are rampant in Egypt. Violent clashes with police at demonstrations are a continuing concern. Problems also include the removal of an elected civilian government, excessive use of force by security forces, unlawful killings and torture, arbitrary arrests, limits on the judiciary, and restrictions on civil liberties.

Egypt considers all children born to Egyptian fathers to be Egyptian citizens even if the child is not issued an Egyptian birth certificate or passport. Dual nationals residing in Egypt for more than six months require proof of Egyptian citizenship. Male dual nationals staying in Egypt for more than six months and who have not completed military service must obtain an exemption certificate before they can leave. Individuals who travel to Egypt on their Egyptian passport are normally treated as Egyptian citizens. The ability to provide U.S. consular assistance to those traveling on Egyptian passports is extremely limited.

Policies

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG lists disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available,

reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

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.

In 2014, Applicant possessed a current Egyptian passport that did not expire until 2018. His possession of an Egyptian passport created security concerns under AG ¶ 10 that may be disqualifying in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country;

(7) voting in a foreign election.

Applicant became a naturalized U.S. citizen and was issued a U.S. passport in 2013. He possessed a current Egyptian passport until September 2014, when he surrendered it to his FSO. Foreign preference disqualifying condition AG ¶ 10(a) is supported by the evidence. If this condition is not mitigated it would disqualify Applicant from eligibility to hold a security clearance.

AG ¶ 11 provides conditions that could mitigate the security concerns for foreign preference:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant surrendered his Egyptian passport to his FSO in September 2014. There is no evidence that he used his Egyptian passport, in preference of his U.S. passport, to travel after he became a U.S. citizen. He testified that he discontinued his use of his Egyptian passport after his naturalization as a U.S. citizen. There is no evidence to show that Applicant exercised any right or privilege, or that he complied with any obligation of foreign citizenship after becoming a U.S. citizen, personally or through the foreign citizenship of a family member.

AG ¶¶ 11(a), (b), (c) and (e) are applicable. Applicant has expressed his willingness to renounce his Egyptian citizenship. His Egyptian passport was surrendered to his FSO. Applicant testified he has no intention to renew his Egyptian passport or to return to Egypt. He mitigated the security concerns alleged under Guideline C.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

The guideline indicates conditions that could raise a security concern and may be disqualifying under AG ¶ 7 in this case:

- (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; 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's parents are citizens and residents of Egypt, and his sister is a citizen of Egypt, albeit currently residing in the United States. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone may be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²

Applicant has frequent contacts and a close relationship of affection and obligation with his parents. These contacts create a risk of foreign pressure or

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

attempted exploitation because there is always the possibility that Egyptian agents or individuals such as terrorists and criminals operating in Egypt may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's relatives in Egypt create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly or through his parents in Egypt.

AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions. The Government produced substantial evidence raising potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(c) 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) 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.

Applicant was born, raised, and educated in Egypt. He immigrated to the United States in 2000, at age 23, under a student visa. He remained in the United States and became a naturalized U.S. citizen in September 2013.

Applicant has made the United States his home since 2000, and apparently has done well in school and has been a productive U.S. citizen. He presented no evidence to show that he owns any property or financial interests in the United States. Applicant claimed that he owns no property or financial interest in Egypt or any other foreign country.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his parents living in Egypt. Although there is no evidence that Egyptian government agents, or other entities, have approached or threatened Applicant or his parents living in Egypt, he is nevertheless potentially vulnerable to threats, coercion, inducement, and manipulation made against him or his parents living in Egypt. We cannot rule out such a possibility in the future.

The threat of terrorism in Egypt is considered to be high. There is evidence of past terrorist activities against U.S. and government of Egypt targets in Egypt. It is possible that terrorists or criminals would attempt to coerce Applicant through his relatives living in Egypt, if they determined it was advantageous to do so. This places the burden of persuasion on Applicant to demonstrate that his contacts in Egypt do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connection to his parents.

In deciding whether Applicant's family members are in a position to be exploited, I considered Egypt's form of government. 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 or inducement. 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 collection operations against the United States.

I note that the United States values its long history of cooperation and friendship with Egypt. Both nations share a relationship based on mutual interest in Middle East peace and stability, revitalizing the Egyptian economy and strengthening trade relations, and promoting regional security. Egypt has been a key U.S. partner in ensuring regional stability and on a wide range of common security issues, including Middle East peace and countering terrorism.

Notwithstanding, 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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the

United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

Applicant's evidence is insufficient to establish that it is unlikely he will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. Applicant's parents are residents and citizens of Egypt. He has daily telephone-internet contact with his parents, and his most recent trip to Egypt was in 2013. If members of the community, terrorists, criminals, or corrupt government officials became aware of his work for U.S. interests and his U.S. citizenship, his parents, friends, and extended relatives living in Egypt could be in danger or placed at unnecessary risk.

Applicant's contacts with his parents in Egypt create a heightened risk of foreign influence and exploitation. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Egypt who might be coerced by terrorists, criminals, or governmental entities in that country.

Applicant professed that his loyalty and sense of obligation is to the United States. He averred that he has no loyalty to Egypt. Notwithstanding, his sense of obligation to his parents in Egypt is very strong. He has lived 15 years in the United States, but submitted no evidence of property or financial interests in the United States, excluding his job. Nor did he present evidence to show deep and longstanding relationships and loyalties in the United States.

Although Applicant stated that his parents are elderly and retired, he provided little information concerning their prior employment, possible connections to the Egyptian government or its military forces, ownership of property in Egypt, and whether they depend on the Egyptian government for their support or medical care.

The record evidence fails to support a determination that Applicant's ties and sense of obligation to the United State are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his parents in Egypt.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines B and C in my whole-person analysis. I considered that Applicant has been in the United States since 2000. He became a naturalized U.S. citizen in 2013. Applicant has strong affection and a sense of obligation to his sibling (residing in the United States) and to his parents who are citizens and residents of Egypt.

I considered that Applicant's sister and his parents are applying for permanent residency in the United States and that he anticipates they will apply for U.S. citizenship in the near future.

Notwithstanding, considering the evidence as a whole, Applicant's mitigating information taken together is insufficient to fully overcome the foreign influence security concerns under Guideline B. Applicant's evidence failed to establish that it is unlikely he will be placed in a position of having to choose between the interests of his parents and the interest of the United States.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried his burden of persuasion and the foreign influence security concerns are not mitigated. Eligibility for 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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2c:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

JUAN J. RIVERA
Administrative Judge