

KEYWORD: Foreign Influence

DIGEST: The government's evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his limited family connections to Egypt. Clearance granted.

CASENO: 06-25930.h1

DATE: 08/29/2007

DATE: August 29, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-25930
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOHN GRATTAN METZ, JR**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The government's evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his limited family connections to Egypt. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 4 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence concerns.¹ He answered the SOR 24 April 2007, and requested a decision without hearing. He did not respond to DOHA's 15 June 2007 File of Relevant Material (FORM).² The record closed 25 July 2007, the day the response was due. DOHA assigned the case to me 2 August 2007.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, but provided annotations indicating that a brother who resided in Sudan had moved to the United Arab Emirates (U.A.E.) and one sister residing in Egypt was a U.S. citizen. Accordingly, I incorporate those admissions as findings of fact.

Applicant is a 55-year-old product assurance manager, continuously employed by the same defense contractor since August 1987. He seeks to retain the access to classified information he has held since approximately December 1993.

Applicant was born in Egypt in October 1951. In 1985, he went absent-without-leave (AWOL) from the Egyptian Air Force and immigrated to the U.S. In August 1985, he married, and remains married to, a native-born U.S. citizen—an act prohibited by the Egyptian Air Force. Applicant believes he can never return to Egypt because he might be detained by the authorities.³ He immigrated to the U.S. on a valid Egyptian passport,⁴ and obtained U.S. citizenship in October 1989.⁵

In November 1985, Applicant's background was investigated on to perform contract work for the Federal Bureau of Investigation (FBI) that did not require access to classified information.

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992, as amended and revised—most recently in August 2006 (Directive).

²The substantive evidence consists of the SOR, Applicant's Answer, and his June 2005 clearance application.

³In fact, this belief may be erroneous. The U.S. State Department Consular Information Sheet for Egypt (December 2006) states: "Male dual citizens who have not completed military service are not generally required to enlist in the Armed Forces. However, they must obtain an exemption certificate through the Ministry of Defense Draft Office before they can leave Egypt. Individuals who may be affected can inquire at an Egyptian consulate abroad before traveling to Egypt." This suggests that Applicant might not be detained, despite his AWOL status, but also that he could discover any impediment in that area without leaving the U.S., simply by contacting an Egyptian consulate.

⁴Although not stated in the record, I infer this based on the facts that he married a U.S. citizen in August 1985, shortly after he immigrated to the U.S., and became a legal permanent resident (LPR) of the U.S., a status he could not have been given unless he was lawfully in the U.S., either on a valid passport or a grant of asylum.

⁵Spouses of U.S. citizens may apply for citizenship after three years legal permanent residence in the U.S., compared to the regular five-year waiting period. Applicant would have become a legal permanent resident (LPR) after he married in 1985.

Applicant went to work for his current employer in August 1987. He became a naturalized U.S. citizen in October 1989. In approximately December 1993, he was granted his secret industrial clearance. He appears to have held this clearance without incident since. He obtained his most-recent U.S. passport in June 2000. To the government's knowledge, he has never traveled to Egypt since coming to the U.S. and has not had an Egyptian passport since it expired after he immigrated to the U.S.⁶

In June 2005, Applicant completed a security clearance application to initiate a periodic reinvestigation of his clearance. He reported his Egyptian birth and his dual citizenship—past or otherwise. He listed his 89-year-old father, two older sisters, and two younger brothers, all citizens of Egypt and all but one sister residing in Cairo, albeit at unknown addresses. He does not know where his oldest sister lives, but indicated that she holds dual Egyptian/United Kingdom citizenship. Applicant's employer certified that all local agency checks had been performed with favorable results before submitting the application.

Applicant was presumably interviewed during his current background investigation, providing the information about his going AWOL from the Egyptian Air Force (SOR 1.e.) and marrying a U.S. citizen in violation of Egyptian Air Force regulations (SOR 1.f.), as well as the fact that one brother now resided in Saudi Arabia (SOR 1.c.).⁷ In his annotations to his answer, Applicant indicated that this brother, a doctor, now resides in the U.A.E. He also noted that one of his sisters married a U.S. citizen, and had become a naturalized U.S. citizen, residing with her husband in Egypt.

Egypt is a republic that obtained its independence from Great Britain in 1922. Its population of 79 million, including 16 million in Cairo, makes it the most populous country in the Arab world and the second-most populous in Africa. Egypt and the U.S. enjoy a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, revitalizing the Egyptian economy and strengthening trade relations, and promoting regional security.⁸ Egypt remains a strong military and strategic partner of the U.S., and is a key partner in the search for peace in the Middle East and resolution of the Israeli-Palestinian conflict. However, Egypt has a poor human rights record and has been subject to terrorist attacks. Nevertheless, Egypt is not a known collector of U.S. intelligence or sensitive economic information. Egypt is not known to target U.S. citizens to obtain protected information.

⁶The government alleged no travel to Egypt, a routine allegation in Guideline B cases. In addition, Applicant's clearance application confirms the June 2000 issue date for his passport, and records his not having a valid foreign passport within the last seven years (to June 1998). However, he reported foreign travel to Mexico in March 1999 and to Canada in July 2000. At that time, Canada, Mexico, and the U.S. permitted land border crossings and returns to the U.S. with any form of proof of U.S. citizenship. For Applicant, as a naturalized U.S. citizen, the only two forms of proof would be his naturalization certificate or a U.S. passport, as a birth certificate or any identification showing place of birth would show Egypt as the place of birth. Given that he was first eligible to apply for a U.S. passport in October 1989, that processing times likely meant that he could not receive his first passport until sometime in early 1990, and that adult passports are valid for 10 years from date issued, I infer that he probably traveled to Mexico in March 1999 on his first passport but had to obtain a new passport in June 2000 for his July 2000 trip.

⁷This information must have come from a subject interview, because it does not appear in Applicant's clearance application, the only document pre-dating the SOR.

⁸U.S. State Department Background Note: Egypt, March 2007.

POLICIES AND BURDENS

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests 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.⁹

CONCLUSIONS

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.¹⁰ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts

⁹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁰Revised Adjudicative Guidelines, ¶ 6.

with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.¹¹

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the foreign country involved, Egypt and the U.S. enjoy excellent foreign relations, and shared interests over a wide range of issues. Further, in order for Applicant's family members to be in a position to be used as a pressure point on Applicant—whether benign or malevolent—there must be a government or other entity ready, willing, and able to collect protected information and use it. Egypt is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. In addition, in this case it is not clear what claim Egypt might have on Applicant. He has never traveled there, is unlikely to travel there given his belief that he might be detained for being AWOL over 20 years, is unlikely to be detained for failing to complete his military obligation even if he traveled there on the only passport he has—a U.S. passport—and could determine his risk of being detained by contacting an Egyptian consulate without leaving the U.S. The risk that Egypt might seek protected information from Applicant is low, if not non-existent.

On the Applicant side of the equation, the government produced no evidence that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts in Egypt. The government failed to establish any security concerns related to Applicant's family members residing in Egypt. The State Department Background Note on Egypt submitted by the government establishes no basis for concern, and Department Counsel has articulated no reason why Applicant's relatives residing in Egypt raise security concerns. Department Counsel argues that Applicant's factual admissions—that he has family members residing in Egypt—establishes the prima facie case that Applicant must refute. For that to be so, Applicant must be considered to have admitted the legal conclusion asserted by the SOR, that the facts alleged raise the security concern stated under Guideline B, which merely quotes the stated concern in ¶6 of the Revised Adjudicative Guidelines. However, Applicant's factual admissions do not constitute an admission to the legal conclusions. Further ¶6 and ¶7.(a) contemplate, and Department Counsel acknowledges in argument, that family ties alone are not enough to establish a concern under Guideline B. There must be a heightened risk as well, and the government has to produce the facts to establish that risk. The government's facts show that Applicant's contacts with his family members in Egypt were sufficient for him to place them in Cairo, Egypt, but not otherwise provide addresses for them. Applicant has apparently had enough contact with his brother, the doctor, to document the brother's moves to Saudi Arabia and U.A.E.¹² He also provided information that one sister has become a U.S. citizen and resides in Egypt with her American husband. None of these facts is sufficient to establish a heightened risk.

Similarly, Department Counsel argues that Applicant's status as a former member of the Egyptian Air Force regardless of duty status (i.e., going AWOL from the Egyptian Air Force, immigrating to the U.S., and marrying a U.S. citizen in violation of Egyptian Air Force regulations)

¹¹Revised Adjudicative Guidelines, ¶ 7.(a).

¹²Neither of which did Department Counsel identify as countries of concern. The records for administrative notice pertain to Egypt solely.

constitutes a conflict of interest cognizable under ¶7.(b).¹³ Presumably, his acquiring U.S. citizenship, in likely violation of Egyptian Air Force regulations, raises additional conflicts. The hyperbolic hypothetical highlights the argument's absurdity. I cannot imagine a better demonstration of his intent to sever all contacts with the Egyptian Air Force and the Egyptian government than going AWOL, leaving, Egypt and immigrating to the U.S. Further, there is no evidence whatsoever that Applicant has a desire to help any foreign entity, personal, group, corporate, or governmental. Viewed from a common sense perspective, the record evidence does not support the speculative scenarios suggested by the government. There is nothing in the known circumstances of Applicant's relatives in Egypt, or the nature and extent of his contacts with them, to heighten the risk that he could be impelled to provide protected information to Egypt. Speculation, supposition, or imagination cannot substitute for the facts necessary to convert remote possibility into reasonable probability. I resolve Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a:	For the Applicant
Subparagraph b:	For the Applicant
Subparagraph c:	For the Applicant
Subparagraph d:	For the Applicant
Subparagraph e:	For the Applicant
Subparagraph f:	For the Applicant

DECISION

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

John G. Metz, Jr.
Administrative Judge

¹³¶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. (Emphasis Added)