



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



In the matter of:)	
)	
)	ADP Case No. 16-03269
)	
Applicant for Public Trust Position)	

Appearances

For Government: Brittany C. Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

02/11/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the foreign preference trustworthiness concern, but he did not mitigate the foreign influence trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On February 2, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline C, foreign preference, and Guideline B, foreign influence. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.¹

Applicant answered the SOR on July 25, 2017 (Answer), and elected to have a hearing before an administrative judge. The case was assigned to me on June 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

(NOH) on June 22, 2018, scheduling the hearing for July 10, 2018. I convened the hearing as scheduled.

I appended to the record as Hearing Exhibits (HE) I and II, respectively, the Government's exhibit list and discovery letter, and its request for administrative notice of facts about Egypt. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A through I, which were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on July 19, 2018.

Procedural Ruling

Request for Administrative Notice

Department Counsel's request that I take administrative notice of certain facts about Egypt was included in the record as HE II. Applicant did not object. I have taken administrative notice of the facts contained in HE II. The facts administratively noticed are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 2.c and 2.g, denied SOR ¶¶ 1.a, 2.d, 2.f, and 2.h, and neither admitted nor denied SOR ¶¶ 2.b and 2.e. He is 52 years old. He married in 2001, divorced in 2003, remarried in 2010, and divorced in 2017. He has one child, a son who is a minor, from his second marriage.²

Applicant was born in Egypt. He graduated from high school in Egypt in 1984 and he obtained a medical degree from a university in Egypt in 1990. From 1990 to 2000, he worked in Egypt as a medical doctor for three hospitals, of which one was a public hospital.³ From 1992 to 1993, he performed mandatory service in the Egyptian military.⁴

In 2000, Applicant immigrated to the United States. He applied for U.S. citizenship in 2001, and he became a naturalized U.S. citizen and obtained a U.S. passport in 2008. In the United States, he obtained a language certificate in 2011 and a master's degree in 2016. He has worked as a clinical data specialist for his current employer since July 2015. He was first granted eligibility to hold a public trust position in May 2016, and he is seeking to maintain his eligibility for access to sensitive information.⁵

² Answer; Tr. at 6-9, 15-18; GE 1; AE E.

³ Applicant obtained a medical certification in the United States in 2002, and he volunteered at various hospitals in the United States from around 2000 to 2008; he is not licensed to practice medicine in the United States. Tr. at 6-7, 37; AE B, C.

⁴ Tr. at 6-9, 15-18, 33-42, 46-47; GE 1, 2; AE B, C.

⁵ Tr. at 6-9, 15-18, 33-42, 46-47; GE 1, 2; AE B, C.

At the time of his 2015 security clearance application (SCA), Applicant had an Egyptian passport issued in 2014 that was not scheduled to expire until 2021 (SOR ¶ 1.a). He indicated that when he traveled to Egypt, he did so on his U.S. passport; upon arrival in Egypt, he used his Egyptian passport as identification to show that he was an Egyptian citizen, because it was convenient for him to do so. He relinquished his Egyptian passport to his facility security officer (FSO) when he received the SOR in 2017. He testified that he had no intentions of retrieving his Egyptian passport from his FSO or obtaining another Egyptian passport in the future.⁶

Applicant's second ex-wife is a citizen and resident of Egypt; their son is a dual citizen of the United States and Egypt, residing with Applicant's second ex-wife in Egypt (SOR ¶¶ 2.a, 2.b). Applicant married his second ex-wife in Egypt. He sponsored her move to the United States, but she never became a U.S. citizen. She returned to Egypt in November 2015 with their son, and Applicant testified that he has not since had contact with either of them. She works as an accountant for a bank in Egypt. Applicant was unaware whether the bank was affiliated with the Egyptian government. Applicant testified that she has custody of their son, according to Egyptian law, until he reaches age 15, at which point he can choose the parent with whom he wants to live. Applicant pays \$170 USD monthly in child support, as ordered by an Egyptian court, through a money transfer service in which he wires the money to his 54-year-old brother.⁷

Applicant's mother, former mother-in-law, four brothers, and sister are citizens and residents of Egypt. His former mother-in-law and sister are employed by the Egyptian government, and his one brother was formerly employed by the Egyptian government (SOR ¶¶ 2.c - 2.g). He has not spoken to his former mother-in-law since his 2017 divorce. He indicated in his SCA that she worked for the Egyptian government. He testified that he visits his family in Egypt approximately once every two to three years, and he did so in 2009, 2010, 2011, 2012, 2014 and 2016. He planned to visit them less in the future, and testified that he would do so using his U.S. passport. He testified that none of his family in Egypt are aware that he is seeking to maintain his eligibility for access to sensitive information, and do not know the nature of his work.⁸

Applicant's mother is 79 years old. His 54-year-old brother lives with her. She has never worked outside of the home. Applicant's father was a teacher for the Egyptian Department of Education (DOE); he died when Applicant was 14 years old. Applicant's mother has supported herself through Applicant's father's pension from the Egyptian government. She is diabetic, and she also receives health benefits from the Egyptian government. Applicant talks to her by telephone once every two to three weeks, primarily about her health. He sees her when he travels to Egypt.⁹

⁶ Tr. at 33-42, 80, 93; GE 1, 2; AE A.

⁷ Tr. at 42-46, 71, 92-93; GE 1, 2; AE E.

⁸ Tr. at 47-80; GE 1.

⁹ Tr. at 47-77, 90-92; GE 1, 2.

Applicant's four brothers are ages 60, 56, 54, and 45. All of them performed mandatory service in the Egyptian military. The 60-year-old brother is married with two children. He works as a translator in Saudi Arabia, the details of which Applicant was unaware. His wife and children continue to live in Egypt. Applicant talks to him once every several years. Applicant was unaware whether this brother had any affiliations with the Egyptian government or military.¹⁰

Applicant's 56-year-old brother is married with four to five children. He works for a hotel in Dubai. Applicant talks to him by telephone once every six months to a year. Applicant testified that this brother does not have any affiliations with the Egyptian government or military.¹¹

Applicant's 54-year-old brother is married with two children. This brother lives with their mother. He is retired from the Egyptian military and receives a military pension. Applicant was unaware whether this brother maintained any contacts in the Egyptian military. Applicant testified that this brother was trying to start his own business, but Applicant was unaware of further details. Applicant talks to him once every month to two.¹²

Applicant's 45-year-old brother is married with three children. He used to work for the Egyptian DOE. As of Applicant's Answer, this brother was working in Bahrain as an information technology specialist and teacher at a private school. Applicant did not believe this brother had any current affiliations with the Egyptian government or military. This brother's wife and children continue to live in Egypt. Applicant talks to this brother two to three times yearly. Applicant sent him \$400 in around early 2018, because this brother told him that work was not going well and he needed to send money to his family in Egypt.¹³

Applicant's sister is 50 years old. She is married with five children. She works as a teacher for the Egyptian DOE. Her husband owns a pharmacy. Applicant did not believe her husband was affiliated with the Egyptian government or military. Applicant talks to her by telephone once every three to four months.¹⁴

Applicant's fifth brother, age 57, is a dual citizen of Egypt and the United States, and has resided in the United States since approximately 1990. He is married with four children; all are U.S. citizens. He works in media. Applicant talks and sees this brother often. This brother occasionally sends money to their mother.¹⁵

¹⁰ Tr. at 47-77, 87-89; GE 1, 2.

¹¹ Tr. at 47-77; GE 1, 2.

¹² Tr. at 47-77, 86-87; GE 1, 2.

¹³ Tr. at 47-77, 85; GE 1, 2.

¹⁴ Tr. at 47-77, 85-86; GE 1.

¹⁵ Tr. at 49-51, 88-91; GE 1, 2.

From 2008 to 2016, Applicant owned an apartment in Egypt; its value as of his SCA was approximately \$40,000 USD (SOR ¶ 2.h). With help from his mother and siblings, he purchased it for approximately \$10,000 USD from his 60-year-old brother, with the idea that he would use it with his family when he traveled to Egypt. He sold it for \$25,000 USD to a distant relative, and he gave all of the proceeds to his family in Egypt. At the time of his SCA, he also had a bank account in Egypt. He opened it with \$200 USD between 2012 and 2014. He had returned to Egypt to live, while working as a medical interpreter for a U.S. company and completing his master's degree, to spend time with his then-wife and son and complete their paperwork to immigrate to the United States. He opened the account in the event he needed to transfer money to the United States. He testified that he never used it. He does not own any other foreign property or have any other foreign financial interests. He testified that he does not stand to own his mother's property in Egypt, which will likely be inherited by his siblings who live there.¹⁶

As of the date of the hearing, Applicant's annual salary was approximately \$53,000. He was renting a room in the United States since 2016, in the home of a friend who was also a prior roommate from 2006. He has leased a car for three years and planned to buy it. He has a bank account in the United States with a balance of approximately \$1,800. He has a retirement account with a balance of approximately \$13,000. He does not have any other assets in the United States. He was not affiliated with any foreign governments. He has received annual security training. He testified that he would report any attempts to blackmail or his family to his FSO.¹⁷

A friend of Applicant since obtaining their certification together in 2011 testified that Applicant is a solid and trustworthy man. Another friend, was Applicant's former roommate in 2006 and is Applicant's current landlord, held a public trust position as of the date of the hearing. The witness testified that he met Applicant's brother in the United States on at least two occasions, and he previously met Applicant's ex-wife and child. He testified that he did not believe Applicant to be a threat to the United States, and described Applicant as a trustworthy man. Applicant's supervisor since March 2017 stated that Applicant was a responsible caretaker of sensitive information and an asset to the team. She rated him favorably in his 2016 to 2017 performance evaluation. Other character references described Applicant as a dedicated, compassionate, and honest individual.¹⁸

Egypt

The U.S. Department of State warns U.S. citizens of threats from terrorist groups in Egypt, and to consider the risks of travel to the country. A number of terrorist groups, including the Islamic State of Iraq and Syria (ISIS) have committed multiple deadly attacks in Egypt. U.S. diplomatic personnel are prohibited from travel in parts of Egypt, and U.S. citizens are warned to avoid those areas.

¹⁶ Tr. at 41-77, 80-85, 93-94; GE 1, 2; AE D.

¹⁷ Tr. at 41-78, 80-85; GE 1; AE G, H, I.

¹⁸ Tr. at 94-108; AE F, G.

Significant human rights problems in Egypt include excessive use of force by security forces; deficiencies in due process; and the suppression of civil liberties, including societal and government restrictions on freedoms of expression and the press, and the freedoms of peaceful assembly and association. Political protests occur without warning in Egypt. Demonstrations have led to frequent violent clashes between police and protestors, resulting in deaths, injuries, and property damage.

Policies

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. AG ¶ 2.b.

A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The 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 protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline C, Foreign Preference

The trustworthiness concern for foreign preference is set out in AG ¶ 9:

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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 10. The following are potentially applicable in this case:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests; and
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law.

Applicant is an Egyptian citizen by virtue of being born there. There is no evidence that he failed to report or disclose to an appropriate security official his possession of an Egyptian passport, or that he failed to use his U.S. passport when entering or exiting the United States. He disclosed his Egyptian citizenship and passport on his SCA and during his background interviews. He indicated that he traveled to

Egypt on his U.S. passport, and he only presented his Egyptian passport upon arrival out of convenience, as identification that he was an Egyptian citizen. He surrendered his Egyptian passport to his FSO upon receipt of the SOR. There is no evidence that he participated in any foreign activities, or that he used his Egyptian citizenship to protect his financial interests in Egypt in violation of U.S. law. He sold his property there in 2016, and he credibly testified that he has not used his Egyptian bank account since he opened it between 2012 and 2014. None of the potentially disqualifying conditions under AG ¶ 10 are established, and I find SOR ¶ 1.a in Applicant's favor.

Guideline B, Foreign Influence

The trustworthiness concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a trustworthiness concern if they result in divided allegiance. They may also be a trustworthiness 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. interests 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 interest 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 7. The following are potentially applicable in this case:

(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;

(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 or technology; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant sold his property in Egypt in 2016. He credibly testified that he has not used his Egyptian bank account since he opened it between 2012 and 2014. AG ¶ 7(f) is not established, and I find SOR ¶ 2.h in Applicant's favor.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding sensitive 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). Finally, we know 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).

AG ¶ 7(a) requires 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. Applicant has not spoken to his mother-in-law since he divorced his second wife in 2017. In addition, his one brother was also no longer employed by the Egyptian government as of the date of the hearing. AG ¶¶ 7(a) and 7(b) are not established as to SOR ¶¶ 2.d and 2.f, and I find SOR ¶¶ 2.d and 2.f in Applicant’s favor.

Applicant’s mother, one brother, sister, second ex-wife, and son, are citizens and residents of Egypt. His sister is employed by the Egyptian government. His three other brothers who are citizens of Egypt and resided in Egypt at the time of the SOR, no longer resided there as of the date of the hearing; though the wives and children for at least two of these three brothers did. While Applicant divorced his second wife in 2017, she is the mother of their minor son. Though he indicated that he has not had contact with either his second wife or their son since 2015, he provides monthly financial support for his son. Terrorist activities and significant human rights abuses are present in Egypt. Applicant’s foreign contacts in Egypt create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence as to SOR ¶¶ 2.a, 2.b, 2.c, 2.e, and 2.g.

Conditions that could mitigate foreign influence trustworthiness concerns are provided under AG ¶ 8. The following are potentially applicable:

(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 and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b). AG ¶ 8(c) is also not established, as Applicant visited his family in Egypt once every year to two between 2009 and 2016. He communicates with his mother once every two to three weeks. He communicates with his brother and sister who reside in Egypt once every month to four months. He provided financial support to his one brother in 2018, so that this brother could support his wife and children in Egypt. As previously discussed, though he divorced his second wife in 2017 and indicated that he has not had contact with either her or their minor son since 2015, he provides monthly financial support for his son.

Applicant has lived and worked in the United States since 2000. He received a language certificate and a master's degree in the United States. He became a naturalized U.S. citizen in 2008. Though he has a bank account in Egypt, he stated that he has not used it since he opened it between 2012 and 2014, and he sold his property in Egypt in 2016. His financial interests in the United States, on the other hand, include his annual salary of \$53,000, and his retirement and bank accounts totaling approximately \$14,800. These are factors that weigh in Applicant's favor. However, Applicant's ties to his family in Egypt are equally as strong. Applicant failed to meet his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the

applicant's conduct and all relevant circumstances. 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.

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

I have incorporated my comments under Guidelines C and B in my whole-person analysis. After weighing the disqualifying and mitigating conditions under both guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign preference trustworthiness concerns, but he has not mitigated the trustworthiness concerns raised by his ex-wife, son, mother, one brother, and sister in Egypt. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for access to sensitive information.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge