



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 17-01979

Appearances

For Government: Brittany Muetzel, Esquire, Department Counsel

For Applicant: John V. Berry, Esquire

05/01/2019

Decision

KATAUSKAS, Philip J., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by his family members who are citizens and residents of Egypt and his Egyptian property interests. His request for a security clearance is granted.

Statement of Case

On March 10, 2016, Applicant submitted a security clearance application (SF-86). On October 30, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant answered the SOR on November 22, 2017, and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2018.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 13, 2018, scheduling the hearing for August 13, 2018. The hearing was convened as

scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibits (AE) A through R, which were admitted without objection. Applicant also called three character witnesses. The record was left open until September 7, 2018, and Applicant timely submitted AE S, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 20, 2018.

Procedural Rulings

The Government and Applicant both requested I take administrative notice of certain facts relating to Egypt encapsulated in GE 3 and AE R. Those documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 49 years old, married (since 1997), and has two children, a daughter age 20 (who attends an American university) and a son age 16 (who is in high school). Applicant was born in Egypt and took his bachelor's degree in Civil Engineering in 1991 from an Egyptian university. He arrived in the United States in 2009 and promptly obtained a green card (Permanent U. S. Resident). He was naturalized in 2015. Because his children were minors living with him when Applicant was naturalized, they are now U.S. citizens. Applicant took a Master's in Business Administration from a U. S. university in 2016. From May 2012 until July 2016, he worked for a defense contractor. In July 2016, Applicant formed his own company and is now self-employed. He specializes in construction and project management. He continues to do work for his former employer. Applicant has worked on federal government projects, including embassy construction, since 1995. While working for his former employer, Applicant surrendered his Egyptian passport in 2015 or 2016. When he travels, he uses only his U. S. passport.¹

The SOR alleged that Applicant has family members who are citizens and residents of Egypt and that Applicant has property interests in Egypt. More specifically, as to family members, the SOR alleged that Applicant's: (1) mother is a citizen and resident of Egypt and a retired pharmacist for the department of health; (2) two sisters are citizens and residents of Egypt and that one is a teacher at a technological academy and the other is a diplomat for the Egyptian government; (3) mother-in-law is a citizen and resident of Egypt and a retired pharmacist for the Ministry of Health ; (4) sister-in-law and brother-in-law are physicians, the former employed by the department of health and the latter retired from the department of health.² Applicant admitted those allegations with explanations, upon which he elaborated at the hearing.³

¹ GE 1; Tr.15-21, 58-59.

² SOR ¶¶ 1.a-g.

³ Answer ¶¶ 1.a-g.

As to property interests in Egypt, the SOR alleged that Applicant: (1) owns two apartments; (2) co-owns a home with his mother and two sisters; (3) has bank accounts and bank certificates of varying values; (3) has two bank accounts maintained by his spouse.⁴ Applicant admitted those allegations with explanations, upon which he elaborated at the hearing.⁵

Applicant stated in his Answer that when he became a permanent resident in 2009, his long-time goal and passion was to become a U. S. citizen along with his wife and children and to serve this nation with honor and dignity. He reiterated those sentiments in his hearing testimony. Applicant wanted his children to live in the United States and be educated here. When he became a U. S. citizen, he pledged complete, undivided, and unconditional allegiance to this country. Applicant could never be manipulated, coerced, or induced to do anything that would be against the interests of the United States.⁶

In all of Applicant's years working on federal government projects (since 1995), he has never had any security violations or any disciplinary issues. If he learned that one or more of his family members in Egypt were being exploited to compromise our national security through him, Applicant would report it his Facility Security Officer (FSO) and other appropriate authorities. He has been briefed on the appropriate reporting requirements in such a situation.⁷

Applicant's character witnesses vouched for his exemplary character. The witnesses each had personal knowledge of Applicant. They had known him from as far back as 2006, 2009, and 2012. They each knew the security concerns that prompted this hearing. Applicant was described as "honest" and "trustworthy," "reliable" with "great integrity." Those positive qualities were also expressed in the character letters submitted by Applicant.⁸

Applicant testified about his family members in Egypt. His mother retired as a pharmacist about 15 or 16 years ago. She is 87. Applicant does not provide any financial support to his mother. She has no ties to the Egyptian government and was not required to join any political party to work in the department of health. Applicant visits her about once a year. His mother knows nothing about him seeking a security clearance. She only knows that Applicant does construction engineering but not exactly what his job entails. She only

⁴ SOR ¶¶ 1.l-p.

⁵ Answer ¶¶ 1.l-p. The SOR also alleged that Applicant's spouse owned a vehicle in Egypt. SOR ¶ 1.k. Applicant answered that this vehicle was sold in October 2017, which he confirmed in his testimony. Answer ¶ 1.k; Tr. 32.

⁶ Answer, p. 1; Tr. 17, 39-41, 43.

⁷ Tr. 21, 87-88, 94, 101, 112. This is Applicant's first industrial security clearance investigation. GE 1.

⁸ Tr. 93, 99, 100, 108, 111; AE K through AE Q.

knows that at some point Applicant was working on an embassy project. He speaks to his mother about once a week.⁹

One of his sisters, a chemical engineer, teaches science and chemistry at the Arab Academy for Science and Technology. The Academy is a private school. Applicant's sister has no ties to the Egyptian government or the military.

Applicant's other sister has an administrative position with the Egyptian consulate in Bahrain. It is not a political appointment but is a civil service position. His sisters know nothing about him seeking a security clearance. They only know that Applicant does construction engineering but not exactly what his job entails. They only know that at some point Applicant was working on an embassy project. He speaks to them about every two to four weeks. Applicant sees them when he visits his mother about once every year.¹⁰

Applicant sees his mother-in-law about once a year, when he visits his mother. His mother-in-law has no ties to the Egyptian government or military. She does not know about Applicant seeking a security clearance and does not know about his work for the United States government. He speaks to her about every two to three weeks. Applicant has never given his mother-in-law any financial support.¹¹

Applicant's sister-in-law is a physician with the Ministry of Health. She specializes in infection control. Her spouse is a retired physician from the Ministry of Health. He has been retired for about seven to eight years. Applicant visits his sister-in-law when he visits his mother. Other than that he speaks with his sister-in-law about once a month or less. Applicant speaks only infrequently to her spouse. Applicant has never provided financial support to his sister-in-law or her spouse. She and her spouse have no ties to the government or the military. They do not know about Applicant's application for a security clearance or the work he does for the United States government.¹²

Applicant testified about his real property and financial holdings in Egypt. He owns two apartments. The first apartment (Apt. 1) was alleged to be worth about \$70,000.¹³ That is not currently an accurate evaluation of Apt. 1. Applicant sold that property in July of this

⁹ Tr. 22-23, 61-62.

¹⁰ Tr. 24-27, 63-65. When forward-deployed, the U. S. Navy's 5th Fleet is headquartered in Bahrain. <https://www.cusnc.navy.mil/Subs-and-Squadrons>.

¹¹ Tr. 24-25, 65-66.

¹² Tr. 28-29, 69-72. When Applicant goes to Egypt, he visits his immediate family, which is his mother, his two sisters, his sister-in-law and her spouse. He has distant relatives in Egypt, but he does not have regular contacts with them. Tr. 72, 84-85. Only Applicant's wife and two children know that he has applied for a security clearance. Tr. 86.

¹³ SOR ¶ 1.h.

year because he no longer needed it and could use the proceeds on the new home he is buying here. The sale price was \$49,000.¹⁴

The second apartment (Apt. 2) was alleged to be worth about \$125,000.¹⁵ That is not currently an accurate evaluation of Apt. 2. Because of the economic situation in Egypt and the depreciation of the Egyptian pound, Applicant estimated that its current value is between \$60,000 and \$70,000. Apt. 2 was a gift from his father (now deceased). Egyptian custom is that the father gives his son the gift of an apartment (if he can afford it). In any event, Applicant has not tried to sell Apt. 2, because he wants to keep it as a place to stay when he and his family visit.¹⁶

Along with his mother and his two sisters, Applicant is a co-owner of a home that was alleged to be worth approximately \$15,000.¹⁷ That is not currently an accurate evaluation. Because of the depreciation of the Egyptian pound and that the home's roof has collapsed, it is now worth about \$8,000. Of that value, Applicant's mother would take the first one-eighth, Applicant would take half of the remainder, with his sisters sharing the other half of the remainder. That works out to be about \$3,500 going to Applicant.¹⁸

Applicant testified about his two bank accounts alleged to have a value of about \$40,000.¹⁹ Applicant testified that he closed those two accounts, one in 2016 and the other in 2017.²⁰

Applicant testified about his bank certificates and savings bonds alleged to be worth about \$16,000.²¹ The value of those instruments have depreciated to less than half that amount because of the depreciation of the Egyptian pound. They are now worth about \$6,000. Those instruments are in Egyptian pounds, which makes it very hard to convert to U. S. dollars. When economic conditions improve, Applicant intends to close those accounts.²²

¹⁴ Tr. 29-30, 72-73; AE S.

¹⁵ SOR ¶ 1.i.

¹⁶ Tr. 30, 78-79. Applicant has never considered moving back Egypt. His plan is to retire in the United States. Tr. 78-79.

¹⁷ SOR ¶ 1.j.

¹⁸ Tr. 30-32, 79-80.

¹⁹ SOR ¶ 1.l.

²⁰ Tr. 32-33.

²¹ SOR ¶ 1.m.

²² Tr. 32-34.

Applicant testified about the bank certificates alleged to be worth about \$16,000.²³ These were gifts from Applicant's mother-in-law to his two children. Again, because of the depreciation of the Egyptian pound, those certificates are now worth about \$7,000 or \$8,000. Those certificates are in the name of his children.²⁴

Applicant testified about the two bank accounts his wife maintains in Egypt, one alleged to have a value of about \$14,000 and the second with a value of about \$50,000.²⁵ His wife closed the first account in July of this year. The second account has been devalued due to the depreciation of the Egyptian pound. It is now worth about \$23,000 to \$27,000.²⁶

By my calculation, Applicant's Egyptian assets alleged in SOR totaled \$354,000. Based on Applicant's testimony, either by closing some of those accounts or by virtue of currency devaluation (or a combination of both), his current Egyptian assets total between \$149,000 and \$163,500.²⁷ Of that amount, \$7,000 to \$8,000 are gifts (bank certificates) from his mother-in-law to his two children, which are held in their names, not Applicant's name.²⁸

Applicant's average salary is between \$180,000 and \$190,000 annually, although this year his business has picked up and he might make between \$250,000 and \$300,000.²⁹ Applicant's wife is a civil engineer for a defense contractor, and she makes between \$140,000 and \$150,000 a year including a bonus.³⁰ Applicant has a 401k plan with about \$37,000 to \$38,000 in it.³¹ He and his wife own their home, which is valued between \$530,000 and \$540,000. They are buying a new home, closing at the end of August this year. It is valued at \$950,000.³² Applicant's combined bank accounts (business and personal) total between \$512,000 and \$519,000.³³ He estimated that his U.S. assets total

²³ SOR ¶ 1.n.

²⁴ Tr. 34-35.

²⁵ SOR ¶ ¶ 1.o and p.

²⁶ Tr. 35-36.

²⁷ I did not include Applicant's wife's vehicle, which was sold in 2017.

²⁸ Applicant has no other assets in Egypt. Tr. 36-37.

²⁹ Tr. 39.

³⁰ Tr. 37, 56-57; AE I.

³¹ Tr. 39-40; AE H. Applicant's 401k is invested only in U. S. instruments. Tr. 39-40. Applicant's wife's 401k has a balance of \$56,800. AE H.

³² Tr. 38-39; AE B.

³³ Tr. 44-46; AE C and AE D. Applicant's FICO score as of January 23, 2018 was 828, which is rated "exceptional." Tr. 47; AE E.

about \$1.7 million. If Applicant lost all of his Egyptian assets, he testified credibly that it would not have any impact on him financially.³⁴

Egypt

Egypt is a geopolitical partner of the United States, and those two countries have had strong economic and security relationships since 1979. They have worked in tandem to combat global terrorism and violent extremism. In 2015, Egypt and the United States held a Strategic Dialogue to strengthen the security cooperation between them.

The United States Department of State warns U.S. citizens of threats from terrorist groups in Egypt and to consider the risks of travel to the country. U.S. citizens have been kidnapped and murdered by terrorist and extremist groups. Several terrorist groups, including ISIS, have committed multiple deadly attacks in Egypt, targeting government officials, security forces, public venues, tourist sites, civil aviation and other modes of public transportation, along with diplomatic facilities. U.S. citizens remain at risk as ISIS uses kidnapping for ransom to finance their operations. Due to security concerns, U.S. diplomatic personnel are prohibited from travel to parts of Egypt and U.S. citizens are warned to avoid those areas.

Extremist organizations operate in Egypt and ISIS has called on supporters to attack U.S. citizens and coalition partners. ISIS media has threatened that places associated with Westerners, Christians, the Egyptian military and police, and Egyptian government facilities could be struck at any time. Authorities believe there is continued likelihood of such potential attacks. These terrorist groups use conventional and nonconventional weapons to target U.S. Government interests and private interests.

Egypt's human rights problems involve the excessive use of force by security forces, including unlawful killings and torture; and deficiencies in due process, including excessive use of preventive custody and pretrial detention, use of military courts to try civilians, trials of hundreds of defendants in which authorities did not present evidence on an individual basis, suppression of civil liberties, including societal and government restrictions on freedom of expression, the press, and peaceful assemble and association. There are also problems with arbitrary arrests; a politically motivated judiciary; restrictions on academic freedom; impunity for security forces; limits on religious freedom; and violence, harassment, and societal discrimination against women and girls.³⁵

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

³⁴ Tr. 41-43.

³⁵ AE R; GE 3.

disqualifying conditions and mitigating conditions, which are useful 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern under the guideline 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 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. 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 security concerns under AG ¶ 7. Two 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; 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 or technology;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; 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.

Applicant has connections to his mother, his two sisters, and his in-laws, who are all citizens and residents of Egypt. There is an articulated heightened risk associated with having ties to family members in Egypt, due to the activities of terrorist organizations and insurgents operating within its borders. In addition, Applicant had over \$350,000 in assets in Egypt, between real estate and bank accounts, when the SOR was issued. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 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

- (f) the value or routine nature of the foreign business, financial, or property is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I will address Applicant's Egyptian assets first. When the SOR was issued, Applicant had over \$350,000 of assets in Egypt. That was sufficient to raise a security concern under AG ¶ 7(f). Since that time and before the hearing, Applicant liquidated all but approximately \$163,000 or more. The principal asset remaining is an apartment that was a gift from his late father when Applicant reached manhood (worth about \$125,000 today). He intends to keep that to use when he and his family visit their Egyptian relatives. He intends to liquidate the remaining assets when he is able to do so with the banks in question. Those remaining Egyptian assets constitute less than 1% of Applicant's U. S. assets. AG ¶ 8(f) applies to mitigate any security concern.³⁶

Applicant's closest connection is, understandably, with his mother, who is 87 years old. He communicates with her about weekly and visits her about once per year.³⁷ She does not know that Applicant is applying for a security clearance or that he does work for the United States government. She does not know specifically what Applicant does for a living, only that he is an engineer.

Applicant's contacts with his two sisters are far less frequent than those with his mother. He speaks with his sisters about every two to three weeks. The same is true with Applicant's mother-in-law. He speaks with his sister-in-law less frequently, about once per month. He speaks with her spouse infrequently. Other than Applicant's sister who works in an administrative position with the Egyptian consulate in Bahrain, none these relatives have any ties to the government or military. Nor do any of these relatives (including the sister working for the consulate) know that Applicant is seeking a security clearance or the details of what his job entails. Applicant has been very assiduous in not providing any details about his work to his Egyptian relatives. I do not find the frequency of Applicant's contacts with his Egyptian family members sufficient to raise security concerns. They are reasonable

³⁶ This case is unlike a financial considerations case, where post-SOR remedial efforts are often a sign of bad faith. In fact, Applicant's efforts to liquidate his Egyptian assets shows prudence and his appreciation of the security concerns that ownership of such assets might create.

³⁷ When Applicant visits his mother, he often also sees his sisters, mother-in-law, and sister-in-law.

means to keep in contact with family members who live in a foreign country that is an ally of the United States.³⁸

Those same contacts, however, need to be evaluated under AG ¶¶ 8(a) and (b). Applicant arrived in the United States in 2009 and was granted permanent residency that same year. He applied for citizenship, and it was granted in 2015 (very soon after the required residency in the U. S.). By that time, Applicant had been working on numerous federal government projects since 1995. He testified credibly that his long-time goal was to become an American citizen and raise his children here and educate them. Applicant’s dream came true in that his daughter is attending a prestigious American university, and his son is in high school here. Applicant and his wife are in the process of buying their second home and selling the current home. Their first home is currently valued at over \$500,000. Their new home is valued at \$950,000. As noted above, Applicant estimated that his U. S. assets total about \$1.7 million. He was described as “honest,” “trustworthy,” and with “great integrity.” Finally, Applicant testified credibly that if he learned that one or more of his Egyptian family members were being exploited to compromise national security through him, he would report it to his FSO and other appropriate authorities. Applicant has established himself as a solid United States citizen. I find that it is unlikely that he will be placed in a position to choose between his Egyptian family members and the interests of the United States. In addition, I find that Applicant has such a deep loyalty to the United States that he would resolve any conflict in favor of the U.S. AG ¶¶ 8(a) and (b) apply.

The record does not raise doubts about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.³⁹ Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.p:	For Applicant

³⁸ I find nothing troublesome about Applicant’s sister who works in an administrative position at the Egyptian consulate in Bahrain. Bahrain is a nation friendly to the U. S. and hosts the U. S. Navy’s 5th Fleet.

³⁹ AG ¶ 2(a)(1)-(9).

Conclusion

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

Philip J. Katauskas
Administrative Judge