



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



In the matter of:)
)
) ISCR Case No. 17-04318
)
Applicant for Security Clearance)

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

06/13/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 29, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on November 23, 2018, and elected to have the case decided on the written record in lieu of a hearing. On February 4, 2019, he changed his request to a hearing before an administrative judge. The case was assigned to me on March 14, 2019. The hearing was convened as scheduled on May 9, 2019. Department Counsel amended the SOR at the hearing by withdrawing SOR paragraphs 1.c and 1.d.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, called seven witnesses, and submitted Applicant's Exhibits (AE) A through PP, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Egypt. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Applicant submitted additional information about Egypt. (AE X) I have also taken administrative notice of facts about Egypt from the U.S. Department of State website. Egypt is a republic governed by an elected president and unicameral legislature. The United States and Egypt share a strong partnership based on mutual interest in Middle East peace and stability, economic opportunity, and regional security. Promoting a stable, prosperous Egypt, where the government protects the basic rights of its citizens and fulfills the aspirations of the Egyptian people, will continue to be a core objective of U.S. policy. I also note the significant threat of terrorism and ongoing human rights problems in Egypt.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his employer or a predecessor company for about 13 years. He is applying for a security clearance for the first time. He has a bachelor's degree and a master's degree. He is married with four children.

Applicant was born in the United States to Egyptian parents. His father worked for the Egyptian government and was assigned to the United States. Applicant returned to Egypt with his family when he was about three years old. He grew up and was educated in Egypt, but he often visited the United States and always planned to eventually move back here. He was hired by a U.S. company after college and worked in Egypt until about 2013. His job required him to travel frequently to the United States.

Applicant's wife is from Egypt, and they were married in Egypt. Two of their children were born in Egypt and two were born in the United States. All of their children are U.S. citizens. Applicant moved his family to the United States in 2011. From 2011 to 2013, he divided his time between Egypt and the United States. He moved permanently to the United States in 2013. His wife became a U.S. citizen in 2016.

Applicant's father is deceased. His mother, brother, parents-in-law, and two siblings-in-law are citizens and residents of Egypt. His mother is a retired school teacher in poor health. His brother works in finance. Applicant's brother stays with his mother and takes care of her. Applicant talks to his mother and brother regularly because he wants to check on her.

Applicant's parent-in-laws are retired with medical conditions. His siblings-in-law work for private companies. Applicant talks to his parents-in-laws about once a month when his wife talks to them. He talks to his wife's siblings less often.

Applicant owns the apartment in Egypt where he used to live. He estimated its value at \$40,000. It is for sale. He does not have any other assets in Egypt. Applicant owns his house in the United States as well as the house next store, which he rents to a tenant. He has about \$81,000 in a retirement account. He credibly testified that his family and property in Egypt could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so.

Applicant is active in his community. He is a volunteer firefighter who was named Volunteer Firefighter of the Year in 2015. He started the process to join the National Guard in 2017, but when his wife became pregnant, he decided it would require too much time away from a pregnant wife and three young children. Seven witnesses testified on his behalf, and he submitted numerous documents and letters attesting to his civic involvement, patriotism, honesty, loyalty, strong moral character, and outstanding job performance.

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG paragraph 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive paragraph E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 for foreign influence is set out in AG paragraph 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 paragraph 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;

(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 or personal conflict of interest.

There is a significant threat of terrorism and ongoing human rights problems in Egypt. Applicant's foreign contacts and property create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG paragraph 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

(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.

I considered the totality of Applicant's ties to Egypt. Egypt is a republic governed by an elected president and unicameral legislature. The United States and Egypt share a strong partnership based on mutual interest in Middle East peace and stability, economic opportunity, and regional security. 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen. His wife and four children are in the United States and are U.S. citizens. He is a valued employee and a dedicated member of his community. He was named Volunteer Firefighter of the Year in 2015. With the exception of the apartment in Egypt that is for sale, all of his assets are in the United States.

I find that Applicant's ties to Egypt are outweighed by his deep and long-standing relationships and loyalties in the United States. His closest family, life, home, majority of his assets, and professional career are in the United States. I find that it is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Egypt. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. The above mitigating conditions are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG paragraph 2(d):

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG paragraph 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. I also considered Applicant's strong character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

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:

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| Paragraph 1, Guideline B: | For Applicant |
| Subparagraphs 1.a-1.b: | For Applicant |
| Subparagraphs 1.c-1.d: | Withdrawn |
| Subparagraphs 1.e-1.f: | For Applicant |

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge