



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



In the matter of:)
)
) ISCR Case No. 18-02345
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: Stephen M. Jewell, Esq.

02/05/2020

Decision

CERVI, Gregg A., Administrative Judge:

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

Statement of the Case

On February 7, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on May 10, 2019, and requested a hearing before an administrative judge. The case was assigned to me on July 26, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 20, 2019, scheduling the hearing for September 12, 2019.

I convened the hearing as scheduled. The Government's exhibit list and table of financial allegations, as well as a Request for Administrative Notice for the Arab Republic of Egypt, were appended to the record. I admitted Government Exhibits (GE) 1 and 2 into evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AE) A through K, which I admitted in evidence without objection. The record was held open pending additional documents to be submitted by Applicant. Those additional documents were submitted within the appropriate time, marked collectively as AE C, and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 28, 2019.

Procedural Ruling

Request for Administrative Notice

Department Counsel's request that I take administrative notice of certain facts about the Arab Republic of 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, summarized below. 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. The U.S. government provides Egypt with military training and equipment to support counterterrorism efforts, and significant economic assistance. America is one of Egypt's leading trade partners. There is however a significant threat of terrorism and ongoing human rights problems in Egypt. Egypt has been under a government-declared state of emergency since the 2017 terrorist attacks on Coptic churches. Recently, the threat of terrorism is greatest in the Sinai Peninsula and Western Desert, and with limited exceptions, U.S. government employees are not authorized to travel there. Terrorist attacks have also occurred in Cairo in 2018, and there was an attack on a tourist bus in Giza in 2019.

Findings of Fact

The SOR alleges Applicant's father, grandmother, and parents-in-law are residents and citizens of Egypt; his spouse and mother are citizens of Egypt, residing in the United States; and his brother is a citizen of Egypt, living in the United Arab Emirates (UAE). Applicant admitted the SOR allegations, and provided comments and documents with his answer to the SOR.

Applicant is a 40-year-old American citizen by birth. He received a bachelor's degree in 2007 from an Egyptian university, and a master's degree in 2012 from an American university. He has been employed as a senior software engineer by a U.S. defense contractor since February 2018, who is sponsoring him for a security clearance. He previously worked for a similar U.S. defense contractor from October 2015 to February 2018, but was promoted to a senior position to move to his current employer. Applicant

married in December 2017 and has a one-year-old daughter, also a U.S. citizen. He has no foreign financial interests. Applicant has a brother who is a U.S. citizen and resident, and another who is an Egyptian citizen, working in construction in the UAE.

Applicant's spouse was born in Saudi Arabia and lived there for seven years before moving to Egypt. She is an Egyptian citizen, attended school in Egypt, and became a licensed medical doctor in approximately 2006. She practiced as a dermatologist and studied for a master's degree, which was awarded in 2016. She met Applicant in Egypt in December 2016 through an arrangement with his mother and her family's friends. She traveled to the United States in September 2017 to visit her sister and Applicant, and she and Applicant married in December 2017 in the United States. She became a U.S. permanent resident in January 2019, and intends to apply for U.S. citizenship as soon as permitted. She believes she can apply for citizenship in about three years, and is willing to renounce her Egyptian citizenship. She has no business, financial, or property interests in Egypt. In a post-hearing letter, she described her love and awe of the United States, calling it the greatest of nations with great, hardworking people, and a nation of freedom, justice, expression of speech, liberty, and law. She is studying to take the U.S. medical licensing exam to become a U.S. licensed physician and hopes to practice medicine in the United States.

Applicant's mother and father currently reside together in Egypt, and are both Egyptian citizens. His mother is a 66-year-old U.S. permanent resident who travels between Egypt and the United States to visit her family. She intends to become a U.S. citizen as soon as permitted. She is a degreed civil engineer, but has worked substantially as a homemaker and currently cares for her spouse. Applicant's father is a civil engineering professor at an Egyptian university. He earned a degree from an American university, was named the graduate student of the year, and eventually taught engineering at the same university when Applicant and his brother were born. He received a prestigious American Society of Civil Engineers award for his work and was personally recognized by a U.S. ambassador for his design work on a U.S. embassy compound. He is 69 years old and suffers from a heart condition, but intends to apply for U.S. permanent resident status as soon as practical.

Applicant's brother is an Egyptian citizen, residing in the UAE shortly after graduating from an American university in Egypt in 2007. He is a construction engineer for a UAE construction company. He received a master's degree from a U.S. university in 2017. He is pursuing a U.S. professional engineering certification and has applied for U.S. permanent resident status, which is currently pending approval. He intends to renounce his Egyptian citizenship once he is able to become a U.S. citizen. He and Applicant speak with each other about every three to six months.

Applicant's grandmother is in her late 80s and not highly educated. His parents care for her in Egypt. Applicant speaks with her about twice a year. His father-in-law is a civil engineer who operates his own business in Egypt, and his mother-in-law is a high school graduate and homemaker in Egypt. All are citizens and residents of Egypt.

None of Applicant's family members have ties to a foreign military, government or intelligence service. Applicant maintains weekly phone or social media contact with his parents and tries to visit them annually. He reports all foreign travel to his facility security officer and he provides a debrief when he returns. Applicant noted that his employer trained him on issues to consider when traveling abroad. He owns a home in the U.S. valued at about \$320,000, and has about \$19,000 in bank and investment accounts after paying a cash down payment on his home. He regularly attends religious services. Two of Applicant's co-workers and friends submitted letters on his behalf, attesting to his devotion to family, work and friendships. Applicant is described as compassionate, a passionate family man, dedicated, honest, trustworthy and inspiring. Applicant was awarded in 2018 for the impact his work has on his company, and he was recognized as a team innovator for his achievements in efficiency and effectiveness. He presented himself at the hearing as a thoughtful, mature professional, and appeared honest and forthcoming in his testimony.

Policies

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 ¶ 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 access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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 Exec. Or. 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* Exec. Or. 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 ¶ 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. 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
- (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.

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.

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

AG ¶ 8 provides conditions that could mitigate security concerns. 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; and

(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.

I considered the totality of Applicant’s ties to Egypt, which are essentially limited to his parents, grandmother, and in-laws in Egypt, and his brother working in the UAE. 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 American. His wife is an accomplished and educated U.S. permanent resident who will apply for citizenship as soon as it is available. She is also working toward obtaining her license to practice medicine in the U.S. Their daughter is a U.S. citizen by birth. Applicant is a recognized and valued employee, promoted to a senior position at a young age. He maintains close relations with his co-workers and friends, and regularly attends religious services. His life and all of his assets are in the United States, but he retains regular contact with his parents as is typically expected of a son. His brother is a U.S. citizen, and his other brother is a professional engineer working in the UAE with whom Applicant has limited contact. His brother however applied for U.S. permanent residency and intends to become a U.S. citizen. His mother is a U.S. permanent resident and regularly travels between caring for her spouse in Egypt and visiting with her family in the United States. Applicant's father is an accomplished professor, but suffers from a heart condition and currently maintains his life in Egypt. His grandmother and in-laws are homemakers and a business owner. Applicant has limited contact with them, but his spouse likely maintains regular contact with her parents as is typical of a daughter.

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, 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 ¶ 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 ¶ 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. After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence security concerns. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant his 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge