



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



In the matter of:)	
)	
)	ISCR Case No. 19-03899
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

03/10/2021

Decision

Curry, Marc, Administrative Judge:

Applicant has mitigated the foreign influence security concern generated by his family and financial contacts in Egypt. Clearance is granted.

Statement of the Case

On August 19, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR), alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD on June 8, 2017.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it was clearly consistent with the national interest to grant or continue Applicant's security clearance. Adjudicators recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

The SOR presented allegations 1.a – 1.f. In an undated response, Applicant answered the SOR, denying all of the allegations, except those set forth in subparagraphs 1.a and 1.f. He requested a hearing, and on January 5, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. After Applicant waived his 15-day notice requirement, DOHA, on January 22, 2021, scheduled the hearing for January 29, 2021. The hearing was held as scheduled. I received three Government exhibits (GE 1 – GE 3), four Applicant exhibits (AE A - AE D) and the testimony of Applicant. In addition, at Department Counsel's request, I took administrative notice of the facts set forth in five documents (Hearing Exhibits (HE) I through HE V). At the close of the hearing, I left the record open to allow Applicant to submit additional exhibits. Within the time allotted, he submitted one exhibit which I marked as AE E. I received the transcript of the hearing on February 4, 2021.

Findings of Fact

Applicant is a 56-year-old married man with two adult children from a previous marriage. He has been legally separated from his second wife since 2017, and they have been awaiting the court ratification of a settlement agreement they executed in March 2020. (Tr. 22; AE E)

Applicant was born and raised in Egypt. He attended school in Egypt through college. After fulfilling a compulsory term of service in the Egyptian military, he immigrated to the United States in 1987 and has been a naturalized U.S. citizen since 1989. (GE 1 at 8) In 2012, he earned a master's degree in cybersecurity. Currently, he works for a government contractor as an information technology consultant. (Tr. 24)

Applicant's mother-in-law is a citizen and resident of Egypt. (Answer at 1) Applicant last saw her in 2017 when he returned to Egypt for his father's funeral. (Tr. 24) He seldom talked to her when he and his wife were living together, and has no intention of staying in touch now that he and his wife will be getting divorced. (Tr. 83)

Applicant's half-sister is a citizen and resident of Egypt. They are not close, as they were not raised together and are more than 20 years apart in age. She works at a bank. The only times they encountered each other was when Applicant traveled to Egypt to visit his father, and ran into her at their father's house. (Tr. 84) Applicant last saw her at his father's funeral in 2017. He has not spoken with her since October 2018. (Answer at 1)

Applicant's remaining contacts with Egyptian citizens and residents were friends of his soon-to-be ex-wife. Now that they are separated, he no longer plans to stay in touch with them.

Applicant's mother is a naturalized U.S. citizen. She splits her time between the United States and Egypt. Applicant's adult children are U.S. citizens who live here. (Tr. 37)

Applicant maintains bank account in Egypt. (GE 2 at 3) He uses it to support his mother's medical and living expenses when she is living in Egypt. (Tr. 26) Also, he used it to purchase and maintain a coffee shop in Egypt, and to make mortgage payments for two apartments that he owned in Egypt. (GE 2 at 3) He opened the bank account to avoid incurring international financial transfer fees that he would have incurred if he had used a U.S. bank for his financial transactions. (Tr. 27)

Applicant purchased the aforementioned coffee shop for \$2,700 USD in 2016. (GE 1 at 40). He co-owned it with a married couple who were Egyptian citizens and residents, and with his son. He used the Egyptian bank account to support the shop. He was never involved in its daily operations. (Tr. 26) Later, he sold his ownership interest in the shop. (Tr. 26)

In 2018, Applicant and his wife purchased an apartment in Egypt worth approximately \$80,000. (Answer at 1) They never made it available for rent. They renovated it with the intent of one day returning to Egypt to live there during retirement. As part of their separation agreement, Applicant transferred his ownership interest to his wife. (AE C, AE E) Applicant is no longer interested in moving to Egypt when he retires.

Applicant owned another apartment with his wife in Egypt. (Answer at 2) Per the separation agreement, his wife transferred her ownership interest to him. (Ex. E) Applicant uses it as a vacation home. He travelled to Egypt three times between 2012 and 2014, and twice between 2017 and 2018. He has not travelled to Egypt since April 2018. He is currently attempting to sell the apartment. It is worth approximately \$30,000. Recently, Applicant purchased a home in the United States with his daughter. It is worth \$185,000. (Tr. at 37)

Applicant has approximately \$90,000 deposited in U.S checking and savings accounts, \$20,000 invested in a retirement account, and \$1,000 invested in stock accounts. Applicant has no banking accounts or investment accounts in Egypt other than the bank account discussed, above. Currently, it has a balance of less than one dollar. (AE D)

Administrative Notice

Although Egypt is ostensibly a federal republic, domestic and international organizations have expressed concern about government limitations on association, assembly, and expression.(HE I at 1) Moreover, in 2017, Egypt's president consolidated power through a series of constitutional amendments that were approved through a national referendum, which international observers concluded was corrupt. (HE I at 1)

The U.S. Department of State has assessed Cairo as being a critical-threat location for terrorism directed at, or affecting U.S. government interests. (HE II at 2) Multiple terrorist groups operate in Egypt. In 2019, the Egyptian parliament amended its anti-terrorism law, increasing punishment from ten years of incarceration for those who promote extremist ideology, to 15 years of incarceration. (HE II at 2) In 2019, Egypt

started an academy to train imams and preachers worldwide on how to promote pluralism and counter extremist narratives. Egypt also works closely with the Arab League to organize conferences focused on countering terrorist radicalization and recruitment. (HE II at 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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. An 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.

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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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.” (AG ¶ 6)

Although Egypt is an important partner with the United States in fighting terrorism and addressing its root causes, many terrorist groups are based there, and many parts of Egypt are at high risk of terrorist violence. Moreover, Egypt has a troublesome history of human rights abuses and autocratic rule. Under these circumstances, Applicant’s mother-in-law and half-sister, together with his financial and real estate interests in Egypt, trigger the application of AG ¶ 7(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 county if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” and AG ¶ 7(f), “substantial business financial, or property interests in a foreign country . . . that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.”

Applicant and his wife are separated and a divorce is pending. When they were together, Applicant rarely talked with his mother-in-law, and has no plans of keeping in touch with her once his divorce is finalized. Similarly, any acquaintances that Applicant had in Egypt were friends of his soon-to-be ex-wife. He has no intention of staying in touch with them in the future. Applicant and his half-sister are more than 20 years apart in age. They rarely have had contact over the years. The last time Applicant saw her was at their father’s funeral in 2017, and the last time he spoke to her was in 2018. Under these circumstances, AG ¶ 8(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,” applies to these relatives and contacts.

Applicant sold his interest in the coffee shop that he owned in Egypt. As for the two apartments Applicant owned with his wife, he transferred one of them to her as part of the separation agreement, and is attempting to sell the other one. The value of the remaining apartment and his bank account in Egypt are nominal in comparison to his assets in the United States. Under these circumstances, AG ¶ 8(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,” applies.

Assuming for the sake of argument that these minimal financial interests and contacts in Egypt generate a conflict of interest, it is mitigated when compared to Applicant’s roots in the United States that he has cultivated in the nearly 35 years that he has lived here. AG ¶ 8(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,” applies. I conclude Applicant has mitigated the security concerns raised in the SOR.

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 the 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.

The most relevant whole person factor is “the potential for pressure, coercion, exploitation, or duress.” (AG ¶ 2(d)(8)) In light of the casual and infrequent relationship with his half-sister and his soon-to-be-former mother-in-law, his comparatively nominal financial interests in Egypt, and the amount of time he has been living in the United States, the potential for pressure or coercion is minimal. Under these circumstances, I conclude that Applicant has mitigated the foreign interest 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:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 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 security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc Curry
Administrative Judge