



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



In the matter of:)
)
) ISCR Case No. 20-01099
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/28/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to fully mitigate Guideline B (foreign influence) security concerns. He is close to his mother, two sisters, and his father-in-law, and they are employed by an entity with possible connection to the Egyptian government. Individuals living in Egypt are subject to a risk of coercion if terrorists discover he is helping the United States against their interests. Eligibility for access to classified information is denied.

Statement of the Case

On March 30, 2017, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (SF 86) or security clearance application (SCA). (GE 1). On September 23, 2020, the Department of Defense (DOD) Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline B. (HE 2)

Applicant provided an undated response to the SOR, and he requested a hearing. (HE 3) On February 12, 2021, Department Counsel was ready to proceed. On February 16, 2021, the case was assigned to me. On February 26, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for March 18, 2021. (HE 1) The hearing was held as scheduled in Arlington, Virginia.

Department Counsel provided two exhibits, which were admitted into evidence without objection. (Transcript (Tr.) 14; Government Exhibit (GE) 1-GE 2) Applicant provided 16 exhibits that were admitted without objection, except for Applicant Exhibit (AE) F. (Tr. 21; AE A-AE P) Department Counsel objected to AE F because Applicant's Egyptian birth certificate was not translated to English. (Tr. 15-16) Applicant subsequently authenticated his birth certificate, and it was admitted for the limited purpose of showing the date and place of Applicant's birth. (Tr. 16, 22-24) On March 25, 2021, Applicant's request for administrative notice was received, and the record closed. (Tr. 17, 91) On March 31, 2021, DOHA received the transcript of the hearing.

Administrative Notice

Department Counsel requested administrative notice concerning Egypt. (Tr. 14; HE 4) Applicant did not object to Department Counsel's request for administrative notice, and I granted it. (Tr. 14) On March 25, 2021, Applicant requested administrative notice of additional facts concerning Egypt; there was no objection; and the request was granted. (HE 5)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually, administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Department Counsel's and Applicant's requests for administrative notice are substantially quoted in the Egypt section with minor grammatical and punctuation changes, some omissions, and without footnotes. The first six paragraphs are from Applicant's request, and the remainder is from Department Counsel's request.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/Defense-Office-of-Hearings-and-Appeals/>.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in SOR ¶¶ 1.a through 1.f and 1.h through 1.n. (HE 3) He denied the SOR allegations in SOR ¶¶ 1.g, 1.o, 1.p, and 1.q. (*Id.*) He also provided mitigating information. (*Id.*)

Applicant is a 50-year-old Egyptian and United States dual citizen who seeks a security clearance. (GE 1) He has been employed as a senior engineer for a defense contractor since 2017. (Tr. 18; GE 1 at 13) He has previously held a public trust position. He has also been employed as a consultant from 2010 to the present. (*Id.* at 14) He has exceptional experience as an engineer and held important professional positions with multiple companies in the United States. (AE A) His current annual salary is about \$160,000 plus bonuses. (Tr. 18) In 1995, he married, and his three children were born in the United States in 1997, 2001, and 2006. (Tr. 21; GE 1 at 26-29)

Foreign Influence

In 1970, Applicant was born in Egypt. (GE 1 at 9) From 1987 to 1995, he attended a university in Egypt; he received a bachelor's degree in 1992; and a master's degree in 1995. (*Id.* at 12) In 1995, he immigrated to the United States. (Tr. 44) From 1995 to 2001, he attended a university in the United States. (SCA at 12) In 1997, he received a master's degree in the United States, and in 2001, he received a Ph.D. in the United States. (*Id.* at 13) In 2008, Applicant became a U.S. citizen. (Tr. 48; SCA at 8; GE 2 at 1) He has not taken any action to renounce his Egyptian citizenship. (*Id.* at 9) From 2004 to present, he has lived in the same residence in the United States. (*Id.* at 10)

SOR ¶¶ 1.a, 1.b, and 1.c allege and Applicant admitted his spouse, daughter, and two sons are dual citizens of Egypt and the United States. (Tr. 29) They reside in the United States, and most recently went to Egypt in 2019. (Tr. 29, 32, 58) One son and one daughter have Egyptian birth certificates because "it was natural to get them birth certificates where we are citizens, but they never basically used it." (Tr. 30, 49-50; GE 2 at 7) He did not intend to apply for a birth certificate for his third child. (Tr. 50; GE 2 at 7)

SOR ¶¶ 1.d and 1.e allege and Applicant admitted his mother and two sisters (sister one and sister two) are citizens and residents of Egypt, and in 2019 as of the date of his SOR response, all three were employed, either active or semi-retired, by an entity that may have a connection to the Egyptian government. (Tr. 30-32; GE 1; GE 2) He did not provide details about the importance of their positions or their likelihood of coming to the government's attention. (GE 2) At his hearing, he said he is unsure about the employment status of his mother and sisters one and two, and he did not explain why he was no longer aware of their employment status. (Tr. 31-33, 50) He did not know whether sisters one and two currently work for the same entity as indicated in the SOR. (Tr. 33) He said because of his "infrequent" contact with sisters one and two, he cannot be sure about their current employment situation. (Tr. 53-54) In 2017, Applicant communicated with his sisters and his father-in-law on a monthly basis. (GE 1 at 29-34; GE 2 at 7). He sporadically communicates with his mother every week or every other week, and with his sisters every two to three months. (Tr. 31-32, 51-56; GE 2 at 6) His mother is aware of

his profession as an engineer; however, she is unaware that he is seeking a security clearance. (Tr. 31) SOR ¶ 1.f alleges Applicant's sister three is a citizen of Egypt and a resident of Kuwait; however, after he completed his SCA, she moved to Egypt. (Tr. 32-33; SOR response) Two of his sisters are married, and he does not know what their husbands currently do for a living. (Tr. 33)

SOR ¶¶ 1.g, 1.h, and 1.i, allege Applicant's mother-in-law, father-in-law, and brother-in-law are citizens and residents of Egypt, and all three are or were recently employed by the same entity as his two sisters. His mother-in-law passed away, and SOR ¶ 1.g is mitigated. (Tr. 34) His father-in-law is a citizen and resident of Egypt, and as recently as 2019, he was in a semi-retired position with the entity. (Tr. 34; SOR response) He may be receiving a pension from the Egyptian government or the entity that employed him. Applicant said at his hearing that he is unaware of his father-in-law's current employment. (Tr. 34) He most recently spoke to his father-in-law about three months ago, and he usually speaks to his father-in-law about every six months. (Tr. 34-35, 56) Several years ago, Applicant's father-in-law visited Applicant in the United States. (Tr. 35) One of Applicant's brothers-in-law is married to Applicant's sister, and his brother-in-law is a citizen and resident of Egypt. (Tr. 35) He was employed by the same entity that employed his Applicant's sister; however, Applicant said he did not know his brother-in-law's current employment. (Tr. 35, 55; GE 2 at 11) He speaks to his brother-in-law about every six months when he talks to his sister. (Tr. 36, 55) Applicant's third sister who formerly lived in Kuwait is a stay-at-home mother. (Tr. 55) He did not know about her husband's employment. (Tr. 56)

SOR ¶¶ 1.j and 1.k allege and Applicant admits he has five nieces and four nephews who are citizens and residents of Egypt. (Tr. 36-37) About the only time he has contact with them is when he visits Egypt. (Tr. 36) His nieces and nephews are children, teenagers, and/or students. (Tr. 37)

Applicant visited Egypt as follows: 2009 (one visit for 11-20 days); 2010 (11-20 days); 2011 (three visits for 11-20 days, 6-10 days, and 11-20 days); 2012 (one visit for 11-20 days); 2013 (two visits for 6-10 days and 11-20 days); 2014 (one visit for 11-20 days); 2015 (one visit for 11-20 days); 2016 (one visit for 11-20 days); 2017 (one visit for 17 days), and 2019 (one visit for 11-20 days). (Tr. 52, 68; SCA at 43-60; GE 2 at 13) For all of his trips to Egypt, he traveled with his wife and children, except for his trips in 2011 (twice) and 2013 (once). (Tr. 32, 58; GE 2 at 10) During his visits to Egypt, he usually visited his mother, sisters, father-in-law, brother-in-law, and nieces. (Tr. 32, 35-36, 57) Applicant said he travels to Egypt about every two years. (Tr. 57)

Applicant's spouse was born in Egypt in 1971. (GE 1 at 22) Applicant met her in Egypt. (Tr. 47) She became a U.S. citizen around 2007. (Tr. 49) He and his spouse's total U.S. annual income is about \$290,000. (Tr. 25) His spouse has resided in the United States for 26 years. (Tr. 20) In response to a question about his spouse's contacts with her father, Applicant said, "Probably she calls him, but I don't know." (Tr. 56) She is a successful professional who owns her own business. (Tr. 19) Her equity in the building where her office is located is \$210,000. (Tr. 19, 25) Their equity in their home is about

\$780,000, and they have about \$1,500,000 in U.S. investments and retirement accounts for a total net worth in the United States of \$2,490,000. (Tr. 25-27, 64)

Financial Connections to Egypt

SOR ¶ 1.l alleges Applicant owns an apartment in Egypt valued at about \$80,000. His mother lives in it, and he said he did not “actually control it or own it.” (Tr. 37, 51, 67) His mother controls the property. (Tr. 68) He said the estimated value could be \$1,000, \$50,000, or \$80,000 and the Office of Personnel Management (OPM) investigator just put the highest number they heard in their report. (Tr. 37)

SOR ¶¶ 1.m and 1.n allege and Applicant admits he has two bank accounts in Egypt with a total of about \$87,000 in them. (Tr. 38-40, 68-69; SCA at 37) The amounts in the accounts vary depending on his visits to Egypt and his investments. He has transferred funds through his Egyptian accounts to the United States. (Tr. 39)

SOR ¶ 1.o alleges and Applicant admits he inherited a share of a building in Egypt valued at about \$330,000. (Tr. 41, 69-70; GE 2 at 9) Applicant disputed the valuation of the building, and said he only had a one-eighth share. He explained that because of old rental laws that prevent him from selling the building, the value is actually zero. (Tr. 41) The cost to maintain the property exceeds the rent received from the tenants. (Tr. 41) He did not even know the location of the building, and it is not in his name. (Tr. 70-71)

SOR ¶ 1.p alleges Applicant is eligible to receive retirement benefits from an Egyptian employer valued at about \$10,000. Applicant worked for the same Egyptian entity from 1992 to 1995 that employs or employed his sisters. (Tr. 42-43) He was on a leave of absence from this Egyptian employment from 1995 until 2014. (SCA at 42) He previously indicated he expected to receive retirement from this Egyptian employer of about \$10,000. (SCA at 39; GE 2 at 8) He would be eligible for the retirement benefit at age 60. (Tr. 73) At his hearing, he said he expects not to apply for any Egyptian retirement because the amount received would be too low for him to make an effort to collect. (Tr. 42-43, 72)

SOR ¶ 1.q alleges that from 2015 to 2017, Applicant contributed about 25 percent of the total investment or about \$8,000 to purchase an apartment in Egypt. (HE 2) He agreed that he made the investment; however, he sold his share in 2017 or 2018. (Tr. 43, 63; HE 3; SCA at 38, 40-41)

In sum at most, Applicant’s investments in Egypt total \$80,000 (SOR ¶ 1.l) + \$87,000 (SOR ¶¶ 1.m & 1.n) + \$41,625 (SOR ¶ 1.o (1/8 X \$333,000)) + \$10,000 (SOR ¶ 1.p) = \$218,625. Applicant disputed the SOR’s valuation of several of these investments, and he concluded his Egyptian investments are less than ten percent and possibly less than five percent of the net worth for all of his investments in the United States. (Tr. 28, 39) He does not intend to retire in Egypt. (Tr. 28)

Applicant said he does not vote in Egyptian elections, and he votes in U.S. elections. (Tr. 44-45, 76) However, his July 10, 2017 OPM interview indicates he most

recently voted in an Egyptian election in 2014, several years after he became a U.S. citizen. (GE 2 at 2) He was not aware of any instance where the Egyptian government approached his family members asking for information about Applicant. (Tr. 60) He was unaware of financial connections between the Egyptian government and the entity employing his sisters in 2019 when he completed his response to the SOR. (Tr. 62; SOR response) Applicant was previously employed by the same entity in Egypt that employed his sisters. (GE 2) He and his spouse do not have any siblings or close relatives living in the United States other than those previously discussed. (Tr. 74-75) Applicant is willing to renounce his Egyptian citizenship. (Tr. 78; GE 2 at 11) If his family in Egypt were threatened by terrorists or criminals to obtain classified information from Applicant, he would report to security any attempt to coerce him for information. (Tr. 79) The United States is his home, and he promised to continue to faithfully serve the United States. (Tr. 80)

Character Evidence

Applicant's manager has known Applicant for four years and worked with him on a daily basis for three years. (AE D) He described Applicant as a model employee who is respected for his knowledge, professionalism, and commitment to excellence. (*Id.*) He is talented, diligent, ethical, trustworthy, and responsible. (*Id.*) His performance evaluations indicated: achieved, exceptional performance, excellent performance, complies with standards, or successful performance in all areas. (AE B) Overall his performance evaluations show excellent performance and contributions to the success of his employer. (*Id.*) He presented a certificate showing his efforts to enhance his knowledge and skills. (AE E) His employer gave him a technical recognition award in 2020. (*Id.*)

Egypt

Egypt and the United States belong to a number of the same international organizations, including the United Nations, International Monetary Fund, World Bank, and World Trade Organization. Egypt is a Partner for Cooperation with the Organization for Security and Cooperation in Europe, an observer to the Organization of American States, a partner in the NATO Mediterranean Dialogue, and a non-party state to the International Criminal Court. Cairo hosts the headquarters of the League of Arab States.

The United States established diplomatic relations with Egypt in 1922, following its independence from protectorate status under the United Kingdom. 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.

U.S. assistance to Egypt has long played a central role in Egypt's economic and military development and in furthering the strategic partnership and regional stability. Since 1978, the United States has provided Egypt with what now totals over \$50 billion in military and \$30 billion in economic assistance.

Egypt and the United States signed a Bilateral Investment Treaty in 1982 to promote and facilitate investment between the two countries. Egypt and the United States have signed a trade and investment framework agreement, a step toward creating freer trade and increasing investment flows. American firms are active in most sectors of the Egyptian economy, including oil and gas exploration and production, financial services, manufacturing, construction, telecommunications technology, information technology, and the restaurant and hospitality industry. Flows of U.S. direct investment to Egypt were \$1.37 billion in 2019, bringing the accumulated long-term stock of U.S. foreign direct investment to nearly \$24 billion.

The U.S. has been largely involved in the Multinational Force & Observers (MFO) operation since 1982. The MFO is a peacekeeping operation that supervises and monitors the implementation of the security provisions of the 1979 Egyptian-Israeli Treaty of Peace.

Examples of recent cooperation between the United States and Egypt are as follows: On March 14, 2021, Egyptian ENS SHARM EL-SHEIKH and USS SOMERSET perform passing exercise; On February 23, 2021, Secretary of State Antony J. Blinken's call with Egyptian Foreign Minister Sameh Shoukry occurred; on December 17, 2020, USTDA supported major refinery upgrades in Egypt; on August 24, 2020, the Texas National Guard and Egyptian military began a long-term military partnership; on August 17, 2020, Secretary of State Michael R. Pompeo certified that Egypt is sustaining the strategic relationship with the United States and meeting its obligations under the 1979 Egypt-Israel Peace Treaty; and on January 8, 2019, an agreement was signed in Cairo regarding defense cooperation between the United States and Egypt and entered into force.

Egypt is a republic governed by an elected president and unicameral legislature. Presidential elections were held in March 2018. Prior to the elections, challengers to the incumbent President Abdel Fattah al-Sisi withdrew their candidacy, citing personal decisions, political pressure, legal troubles, and unfair competition. Domestic and international organizations expressed concern that government limitations on association, assembly, and expression severely constrained broad participation in the political process. Egypt was under a government declared State of Emergency for all of 2019, and has been since the April 2017 terrorist attacks on Coptic Churches.

The U.S. Department of State travel advisory for Egypt is Level 3: Exercise increased caution due to terrorism and the Embassy's limited ability to assist dual national U.S. Egyptian citizens who are arrested or detained. Do not travel to the Sinai Peninsula (with the exception of travel to Sharm El-Sheikh by air) or the Western Desert due to terrorism, and to the Egyptian border areas due to military zones. The U.S. Government has limited ability to provide emergency services to U.S. citizens anywhere in the Sinai Peninsula, as U.S. Government employees are not authorized to travel to these areas (with the exception of the beach resort of Sharm El-Sheikh; travel to Sharm El-Sheikh is permitted only by air).

Egypt's borders are under military control; movement of non-military persons and vehicles is substantially restricted, and in some cases prohibited within these areas. Terrorist groups continue plotting attacks in Egypt. Terrorists may attack with little or no warning, and terrorists have targeted diplomatic facilities, tourist locations, transportation hubs, markets, shopping malls, western businesses, restaurants, resorts, and local government facilities. Terrorists have conducted attacks in urban areas, including in Cairo, despite the heavy security presence. Terrorists have targeted religious sites, to include mosques, churches, monasteries, and buses traveling to these locations.

The U.S. Department of State has assessed Cairo as being a critical-threat location for terrorism directed at or affecting official U.S. Government interests. Several terrorist organizations operate in Egypt. The Islamic State-Sinai Province terrorist group (also known as Ansar Bayt al-Maqdis (ABM), an ISIS affiliate) is the most active terrorist group in Egypt; it pledged allegiance to ISIS in 2014.

Most terrorist attacks in Egypt occur in the Sinai Peninsula and largely targeted security forces, but terrorist attacks targeting civilians, tourists, and security personnel in mainland Egypt remained a concern. Though early 2019 witnessed a series of improvised explosive device (IED) incidents in greater Cairo, those incidents became more infrequent as the year progressed. ISIS-Sinai Province (ISIS-SP) carried out the majority of the total attacks in 2019, though it claimed no attacks in mainland Egypt and no attacks against Western interests. ISIS-SP responded to ISIS's call to increase attacks to avenge the terrorist group's territorial defeat in Syria in March. There were at least 151 IED-related attacks in Egypt in 2019, of which ISIS-SP conducted at least 137 in northern and central Sinai, along with near-weekly complex assaults on government-fortified positions, demonstrating the terrorist group's freedom to maneuver during daytime hours and geographic expansion of attacks westward, toward the Suez Canal Zone, and southward. In addition, Harakat Sawa'd Misr (HASM) and al-Qa'ida allied groups such as Ansar al-Islam are believed to be behind the spate of anti-western attacks in mainland Egypt in 2019, and they also posed a continued threat. A number of terrorism-related incidents were reported on Egyptian news and on Egyptian social media in 2019, and included small arms attacks, IEDs, vehicle borne IEDs, kidnappings, executions, complex assaults, ambushes, and targeted assassinations.

According to the most recent U.S. Department of State Human Rights Report, human rights issues in Egypt during 2019 included arbitrary or unlawful killings, including incidents that occurred while making arrests or holding persons in custody or during disputes with civilians. There were also reports of civilians killed during military operations in Sinai. Impunity was a problem. There were instances of persons tortured to death and other allegations of killings in prisons and detention centers. The government charged, prosecuted, and convicted perpetrators in some cases. A local human rights nongovernmental organization (NGO) reported 302 unlawful killings by the government from January through June.

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.

The Government reposes a high degree of trust and confidence in persons with access to classified information. 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying 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 has the following Egyptian family connections: (1) his spouse and three children are dual citizens of the United States and Egypt, and residents of the United States; (2) his mother and two sisters are citizens and residents of Egypt; (3) his father-

in-law and brother-in-law are citizens and residents of Egypt; and (4) his mother, two sisters, father-in-law, and brother-in-law are or were employed by an entity with possible connection to the Egyptian government.

At most, Applicant's investments in Egypt total \$218,625. He disputed the magnitude of several of these investments, and he concluded his Egyptian investments are less than ten percent and possibly less than five percent of the net worth for all of his investments in the United States.

Applicant did not have sufficient connections with his mother-in-law (she is deceased), five nieces, and four nephews to cause a security concern. His nieces and nephews are much younger than Applicant, and he does not communicate with them. He communicates with their parents. SOR ¶¶ 1.g, 1.j, and 1.k are refuted.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

The mere possession of close family ties with people living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of that applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including

widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Egypt with the United States and the situations involving terrorists and insurgents in that country place a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in or visiting them do not pose a security risk because of the risks due to terrorists in that country. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting someone living in or visiting Egypt.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. July 28, 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security concerns because those ties and contacts create a potential vulnerability that a foreign power, [criminals, or terrorists] could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

Guideline B security concerns are 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Egypt seek or have sought classified or economic information from or through Applicant, his family, or contacts, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Egypt has a significant problem with terrorism and crime. Applicant's family in that country "could be a means through which Applicant comes to the attention of those who seek U.S. information or

technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationships with people who are living in Egypt or visiting Egypt create a potential conflict of interest because terrorists could place pressure his family living in that country in an effort to cause Applicant to compromise classified information. Those relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s relationships with people living in Egypt and financial connections to Egypt and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(f) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns 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 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

As indicated in the disqualifying conditions Foreign Influence section, *supra*, Applicant and his spouse have several relatives who are citizens and residents of Egypt.

He has frequent contacts with several of them. His contacts with them increase the risk that they will be targeted to put pressure on Applicant to provide classified information.

The Appeal Board has concluded that contact every two months or three months constitutes “frequent contact” under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sept. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent and stating “The frequency with which Applicant speaks to his family members in Iran does not diminish the strength of his family ties.”). Frequency of contact is not the sole determinant of foreign interest security concerns. “[I]nfrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family as well as his or her spouse’s immediate family.” ISCR Case No. 17-01979 at 4 (App. Bd. July 31, 2019).

In 2017, Applicant communicated with his sisters and father-in-law on a monthly basis. In 2021, he communicated with his mother every week or every other week, and with his sisters every two to three months. He most recently spoke to his father-in-law about three months ago, and in 2021, he usually speaks to his father-in-law about every six months. He speaks to his brother-in-law about every six months when he talks to his sister. He did not know how frequently his spouse communicates with her father. His communication with his brother-in-law is infrequent, and SOR ¶ 1.i is mitigated.

Applicant’s SOR does not allege that Applicant frequently traveled to Egypt. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered, stating:

- (a) to assess an applicant’s credibility;
- (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances;
- (c) to consider whether an applicant has demonstrated successful rehabilitation;
- (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or
- (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegation will not be considered except for the five purposes listed above. His voting in the Egyptian election in 2014 is insignificant in comparison to the frequency and recency of his votes in U.S. elections.

It is important to be mindful of the United States’ historical investments in Egypt. Egypt is an important U.S. ally in combatting terrorism, and Egypt has been a leading recipient of U.S. assistance, receiving tens of billions of dollars in aid. Peace between Egypt and Israel and stability in Egypt are key to maintenance of peace in the Middle East.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." His relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Egypt. Applicant and his spouse have lived in the United States for 26 years. In 2007, she became a U.S. citizen, and in 2008, he became a U.S. citizen. He received a master's degree and a Ph.D. in the United States. He has excellent employment, contributes to the success of his employer, his wife is a successful professional, they have substantial income and investments in the United States, and his spouse and children are U.S. citizens. These factors are balanced against his and his spouse's close relationships with family in Egypt, and their relatives in Egypt are at risk from criminals, terrorists, and human rights violations of the Egyptian government. Applicant's access to classified information could add significant risk to his relatives living in those countries.

At most, Applicant's investments in Egypt total \$218,625. His and his spouse's U.S. investments and retirement accounts total \$2,490,000. He and his spouse's total U.S. annual income is about \$290,000. The value of his Egyptian financial and property interests are less than ten percent of his U.S. financial and property interests. As such, his Egyptian financial and property interests are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure Applicant. See ISCR Case No. 17-01979 at 3-6 (App. Bd. July 31, 2019) (noting the ratio of Egyptian property to U.S. property is "over 9 percent" but not citing assets in Egypt as a basis to reverse grant of security clearance). AG ¶ 8.f applies and mitigates SOR ¶¶ 1.i through 1.q.

Applicant is close to his mother, two sisters, and his father-in-law. The last known information Applicant provided was that they were all either semi-retired or employed by an entity with possible connection to the Egyptian government. Those who are semi-retired may be receiving retirement pensions. Applicant did not present any evidence of the position's lack of a possible connection to the Egyptian government. In ISCR Case No. 17-01979 at 5 (App. Bd. July 31, 2019), the Appeal Board reversed the grant of a security clearance where an applicant's relatives were employed or retired from employment in the Egyptian government, and the Appeal Board said:

In the past, we have recognized that an applicant's ties, either directly or through a family member, to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons the applicant could come to the attention of those interested in acquiring U.S. protected information. See, e.g., ISCR Case No. 08-10025 at 2 and 4 (App. Bd. Nov. 3, 2009) (Applicant's brother was a high-level foreign government official); ISCR Case No. 11-04980 at 2 and 6 (App. Bd. Sep. 21, 2012) (Applicant's sister-in-law was married to a retired high-ranking official in a foreign army); and ISCR Case No. 11-12632 at 2 and 5 (App. Bd. Feb. 2, 2015) (Applicant's niece was an employee of a high-ranking foreign government official). Given the facts in this case, it is foreseeable that the high-level governmental position of Applicant's sibling could become a means through which parties could attempt to exert pressure on him.

In sum, Applicant's connections to his relatives residing in Egypt who are or were employed by an entity with a possible connection to the Egyptian government are too significant to mitigate without a more detailed showing of their lack of significance to the Egyptian government. His connections to the United States, taken together, are insufficient to overcome the foreign influence security concerns under Guideline B.

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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 50-year-old Egyptian and United States dual citizen who seeks a security clearance. He has been employed as a senior engineer for a defense contractor since 2017, and as a consultant from 2010 to the present. He has exceptional experience as an engineer and held important professional positions with multiple companies in the United States. In 1995, he married, and his three children were born in 1997, 2001, and 2006 in the United States. Applicant and his spouse immigrated to the United States in 1995, and he became a U.S. citizen in 2008. His spouse became a U.S. citizen in 2007. He and his spouse have accumulated substantial investments in the United States. They have significant annual U.S. incomes.

Applicant's manager described Applicant as a model employee who is respected for his knowledge, professionalism, and commitment to excellence. He is talented, diligent, ethical, trustworthy, and responsible. His performance evaluations show excellent performance and contributions to his employer. He received a certificate showing his efforts to enhance his knowledge and skills and a technical recognition award.

A Guideline B decision concerning Egypt must take into consideration the geopolitical situation and dangers in that country. See ISCR Case No. 04-02630 at 3

(App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Egypt is a dangerous place because of violence from terrorists, and the Egyptian government does not respect the full spectrum of human rights. Terrorists continue to threaten the Egyptian government, the interests of the United States, and those who cooperate and assist the United States. The United States and Egypt are allies in the war on terrorism and cooperate in many areas.

The evidence against mitigation is more persuasive. From 2009 to 2021, Applicant traveled to Egypt 13 times. He and/or his spouse are close to his mother, two sisters, and his father-in-law. The four relatives are citizens and residents of Egypt. Applicant, his spouse, and three children are dual citizens of the United States and Egypt. The four relatives are retired or semi-retired from positions with an entity with possible connections to the Egyptian government. Applicant did not present evidence of the lack of connection between the entity employing them or providing retirement benefits to them, and the Egyptian government. The entity may be part of or under the control of the Egyptian government. The Egyptian government may closely monitor the activities of some employees of the entity. Applicant did not meet his burden of showing that his and his spouse's associations with his relatives in Egypt are unlikely to come to the attention of those interested in acquiring U.S. classified information. "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member." ISCR Case No. 17-01979 at 5 (App. Bd. July 31, 2019).

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to fully mitigate 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:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i through 1.q:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge