



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



In the matter of:)
)
) ISCR Case No. 21-01811
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Pro se

February 15, 2023

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On February 10, 2022, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B, C, K, and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on a date uncertain, and requested a hearing before an administrative judge. The case was assigned to me on June 1, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on July 21, 2022, and the hearing was convened as scheduled on August 25, 2022. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered fifteen exhibits referred to as Applicant’s Exhibits A through O, which were admitted without objection. Applicant

testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 6, 2022.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Egypt. Department Counsel provided a seven-page summary of the facts, supported by ten Government documents pertaining to Egypt, identified as Government Exhibit I. The documents provide elaboration and context for the summary. Applicant had no objection. (Tr. p. 25.) I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted allegations 1.a., 1.b., 1.c., 1.e., and 2.b. He denied allegations 1.d., 2.a., and 3.a. He failed to admit or deny allegation 4.a. set forth in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 31 years old and unmarried. He has four Master's degrees; Business Administration and Supply Chain Management; Science; Supply Chain Management; and Business Administration. He is currently applying for a position as a Linguist II with a defense contractor. A security clearance is needed in connection with this employment.

Foreign Influence – Guideline B

Applicant's was born in Alexandria, Egypt in 1989. He came from a well-off Egyptian Coptic orthodox family. He grew up in Egypt, attended and completed his elementary school through university level education there, and then immigrated to the United States in June 2009, seeking better employment opportunities. He became a naturalized U.S. citizen in 2015. He is currently a dual citizen of Egypt and the United States.

1.a., 1.c., and 1.d. Applicant's mother and father are citizens and residents of Egypt. They are currently both retired. Prior to his retirement, Applicant's father served in the Egyptian Air Force from 1975 to 1979. He was a 2nd Lieutenant and a sharp shooter. Applicant communicates with his father by telephone, text, and social media on a daily basis. (Government Exhibit 3.) Applicant also communicates with his mother in Egypt by telephone, text, and social media two or three times a week. (Government Exhibit 3.) His parents reside in Egypt, but have green cards and come to the U.S. to visit about every six months or so. Applicant's father owns four properties in Egypt. Applicant estimates that his father's property in Egypt is worth about \$200,000 in U.S.

dollars, rather than \$450,000 that he previously told the investigator. Upon his father's death, Applicant stands to inherit an interest in these properties in Egypt.

Applicant's Exhibit C is a letter to the Administrative Judge, undated, which indicates that since 1992, Applicant's father has known the Director of Business Development and Chief Executive Saudi Arabia for a U.S. Defense contractor. (This individual also submitted a letter of recommendation for Applicant.) From 1995 to 2007, Applicant's father was employed as the General Manager of a Construction Company based in Cairo, Egypt. The company was owed by the sister of the Director of Business Development and Chief Executive Saudi Arabia for a U.S. defense contractor. It is not clear whether this information was disclosed during the investigation of the Applicant. (See Government Exhibits 1, 2, 3, 4 and 5.)

1.b. Applicant's sister is a citizen of Egypt who now resides in the U.S. She has obtained her permanent resident green card, and intends to apply for her U.S. citizenship next year. (Tr. p. 33.)

1.e. Applicant maintains two bank accounts in Egypt. One of the accounts he opened in February 2008, the other he opened in May 2019. He states that each account has about \$200 in it. Applicant also has a credit card that he maintains in Egypt and has invested \$2,400 in an Egyptian bank in order to maintain it. He uses the credit card when he goes there, and his parents make the payments on it for him. (Tr. p. 43-44.)

Foreign Preference – Guideline C

2.a. and 2.b. After becoming a naturalized citizen of the U.S. in January 2015, Applicant primarily resided in and worked in Egypt from about April 2015 to about May 2019. During this period he also voted in Egyptian elections in 2014 and 2018. Applicant stated that he is encouraged by the Egyptian Church Bishops to vote in the Egyptian election, especially for the current president because he helped to rebuild the churches for free after they were burned down in the 2011 revolution in Egypt. While living in Egypt, Applicant enrolled as a student for an on-line Master's program offered by a U.S. University. He traveled back to the U.S. every six months or so, when needed, in order to finish his Master's degree. Applicant stated that he was discriminated against by the U.S. University because they deleted 13 classes from his transcript that he believes he should have received credit for. He was also placed on academic probation in 2015. The complete details of this situation were not presented. (See Applicant's Answer to SOR.)

Guideline K – Handling Protected Information

Since coming to the United States, Applicant has worked various jobs. He has found it difficult to find stable and satisfying employment that will sustain his lifestyle. In the past, on several occasions, he has returned to Egypt to live with his parents because of his financial struggles in the U.S. From 2013 through 2014, while living in the U.S., Applicant was financially supported by his parents in Egypt. During periods of unemployment, his parents in Egypt have financially supported him. For several years,

they have sent him approximately \$1,500 monthly to pay his monthly living expenses. Applicant explained that on this occasion, he returned to Egypt because he wanted to enjoy his family and church practices in Egypt. He also stated, "In simple terms, if there was no church in Egypt, I won't have any motive to visit my home country." (See Applicant's Answer to SOR.)

3.a. In March 2020, while employed for a defense contractor, Applicant was fired for possessing a personal device and taking unauthorized pictures with that device in a classified area. (Government Exhibit 4, and Tr. pp. 59-70.) In August 2020, working as a security guard, he was disciplined for starting work without wearing the required security officer uniform.

From 2011 to the present, Applicant has worked at multiple places of employment in the U.S. He has a less than stellar work history. On a number of occasions, he has either been released from his employment or fired for not fulfilling the job requirements, or disciplined for misconduct of some sort. In January 2011, working as a store clerk, he was fired from his employment for a mistake he made working on the register. In May 2011, working as a business development representative, he was fired for not meeting the sales targets. In December 2012, he was fired for sleeping on the job. (See Tr. pp. 71-73.)

Personal Conduct – Guideline E

4.a. (See discussion above under 1.d., 2.a., 2.b., and 3.a.)

Mitigation

Letters of recommendation from various individuals who know the Applicant describe his favorable character, strong work ethic, and desire to obtain employment. (Applicant's Exhibits E, E, F, G, H, I, and J.)

A letter from a retired Lieutenant Colonel, who is currently a Director of International Business for a defense contractor, states that Applicant would be a good candidate for the U.S. military. (Applicant's Exhibit D.) Another letter also indicates that Applicant's skills would be helpful as a military leader. (Applicant's Exhibits E.) Other letters recognize Applicant's good character and excellent technical skills. (Applicant's Exhibits F through J.)

A letter from a priest affiliated with Applicant's church back in Egypt states that Applicant was born and raised in the Egyptian Orthodox Church in Egypt. Applicant is said to be knowledgeable in multiple languages, and has an expertise in the Arabic language different dialects. He is described as honest, intelligent, dependable, highly educated and hardworking. (Applicant's Exhibit O.)

In assessing the heightened risk created as a result of Applicant holding a security clearance, the Applicant's ties to a potentially hostile country are important. Under the particular facts of this case, I have taken administrative notice of the

information provided concerning the Country of Egypt. Egypt is a republic governed by an elected president and bicameral legislature. Although China, Russia, and Iran, stand out as three of the most capable and active cyber actors tied to economic espionage and the potential theft of U.S. trade secrets and proprietary information, countries with closer ties to the United States have conducted cyber espionage and other forms of intelligence collection to obtain U.S. technology, intellectual property, trade secrets, and proprietary information. In 2019, a black-market arms dealer, an Egyptian, who was also a naturalized U.S. citizen, was found guilty in a scheme to sell and use surface-to-air missiles and was sentenced to 30 years in federal prison. In 2016, an Egyptian procurement agent and two Egyptian citizens were sentenced after pleading guilty to violation of the Arms Export Control Act in connection with the attempted shipment of munitions samples from New York City to Egypt. In 2015, Mostfa Ahmed Awwad was sentenced to 132 months in prison for attempted espionage relating to his attempt to provide schematics of the nuclear aircraft carrier Gerald R. Ford to Egypt, while serving as a Navy Engineer.

In addition, the U.S. Department of State has issued a Level 4 travel advisory for Egypt, advising U.S. nationals not to travel to Egypt due to COVID 19 and Terrorism. Terrorists may attack with little or no warning and have targeted diplomatic facilities, tourist locations, transportation hubs, markets and shopping malls, western businesses, restaurants, resorts and local government facilities. Terrorists have also targeted religious sites. There were an estimated 234 terrorists attacks across the country in 2020 of which the vast majority were claimed by ISIS-SP. There are significant human rights issues that include unlawful or arbitrary killings, torture, and cases of cruel, and inhuman and degrading treatment or punishment by the government, harsh and life-threatening prison conditions, arbitrary detention and political prisoners or detainees, politically motivated reprisal against individual located outside of the country to name a few.

Policies

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

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

Section 7 of Executive Order (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 relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant maintains close contact with his foreign relatives in Egypt, which include his mother and father. Despite his age and perceived independence, Applicant relies heavily on his parents in Egypt for advice, guidance, and at times, financial support. After moving to the U.S., Applicant returned to Egypt to live with his parents when times got difficult. His close foreign contacts with his parents and the unique nature of their relationship may pose a threat and negatively influence Applicant's decision making, impacting the interests and security of the United States. Applicant's sister, who now resides in the U.S., is not as concerning since she does not provide Applicant with financial assistance, nor is their relationship close. Applicant's relationship with his foreign parents is extremely close, regular, and frequent. There was no evidence presented that shows similar relationships that he has established in the United States. Under the particular circumstances here, the risk-benefit analysis is applicable, and these contacts in Egypt do pose a significant security risk to the U.S. government. They may manipulate, induce, or influence the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests.

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

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that 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

(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.

Applicant's foreign contacts with his parents, involving a unique relationship with the Applicant, could present a potential risk for foreign influence. Applicant relies on their advice and their financial support for existence. This close contact can result in a situation that may create a divided allegiance. Although Applicant expresses a desire to make the U.S. his permanent home, he has shown no deep and longstanding relationship with or loyalties to the United States. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has not been established. Accordingly, Guideline B, Foreign Influence, is found against Applicant.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgement, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself: the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(d) participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

After becoming a naturalized U.S. citizen in January 2015, Applicant primarily resided in and worked in Egypt from April 2015 to May 2019. He also voted in Egyptian elections in 2014 and 2018. Applicant stated that he was encouraged by the Egyptian Church Bishops to vote in the Egyptian elections, especially for the current president

because he helped to rebuild the churches for free after they were burned down in the 2011 revolution in Egypt. (See Applicant's Answer to SOR.) Applicant continues to exercise the rights, privileges, and obligations of the Egyptian citizens.

AG ¶ 11 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 11 including:

(a) the foreign citizenship is not in conflict with U.S. national security interests; and

(b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference.

Applicant's actions exhibit a strong foreign preference for Egypt. After becoming a naturalized U.S. citizen, he opened two Egyptian bank accounts and voted in their elections in 2014 and again in 2018. Applicant is not an individual who shows loyalty to the U.S. or has made a commitment to break his ties from his permanent home of Egypt. In fact, he remains deeply immersed in the Egyptian culture. After moving to the U.S., he returned to Egypt to live with his parents and to work there for several years. He is also very committed to the Egyptian orthodox church, that he misses when he is not in Egypt. Applicant has no real assets here in the United States. He does not own a home here, and there is no evidence of any other assets. The above mitigating conditions are not applicable for mitigation here. Accordingly, Guideline C, Foreign Preference, is found against Applicant.

Guideline K, Handling Protected Information

The security concern relating to the guideline for Handling Protected Information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information—which includes classified and other sensitive government information, and proprietary information—raises doubt an individual's trustworthiness, judgement, or willingness and ability to safeguard such information, and is a serious security concern.

The guideline notes several conditions that could raise security concerns under AG ¶ 34. Two are potentially applicable in this case:

(a) deliberate or negligent disclosure of protected information to unauthorized persons including, but not limited to, personal or business contacts, the media, or persons present at seminars, meetings, or conferences; and

(g) any failure to comply with rules for the protection of classified or sensitive information.

AG ¶ 35 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 35 including:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) the security violations were due to improper or inadequate training or unclear instructions; and

(d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

None of the mitigating conditions apply. In March 2020, Applicant was fired from his employment for taking pictures inside of a cleared facility even after specifically being told not to do so. (Government Exhibit 4.) In fact, Applicant took pictures of the entire facility, which was not authorized by his employer. Applicant had completed all training in this area, and knew or should have known the rules and regulations implemented to protect classified information, which was required of him as a condition of his employment. He violated company policies and was terminated from his employment. (Government Exhibit 5.) There was no excuse for this egregious misconduct. This behavior is not tolerated by the DoD under any circumstances. Accordingly, Guideline K, Handling Protected Information, is found against Applicant.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information,

supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant has demonstrated a preference and commitment to Egypt. As a U.S. citizen, he moved back to Egypt to live with his parents and work. He worked in Egypt from April 2015 to May 2019. He has also voted in Egyptian elections in 2014 and 2018. Furthermore, some day, he stands to inherit an interest in his father's property in Egypt.

Applicant has engaged in poor personal conduct demonstrating either a deliberate or negligent failure to comply with rules and regulations for handling protected information when in March 2020, he possessed a cell phone which was prohibited in the area, and took pictures of a classified area with it. Applicant knew or should have known that this conduct was in violation of company security policies and procedures. His behavior shows poor judgment, unreliability and untrustworthiness. Accordingly, Guideline E is found against Applicant.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B, C, K, and E, in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant's Egyptian parents can easily influence Applicant's actions. He has a strong preference for Egypt and his Egyptian culture. In handling protected information, he has violated company policy and security rules and regulations concerning the protection of classified information. Overall, he demonstrates poor personal conduct. Under the particular facts of this case, Applicant's Egyptian parents pose a significant risk to the U.S. government, and he shows a strong foreign preference for Egypt.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Foreign Influence, Foreign Preference, Handling Protected Information, and Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a.	Against Applicant
Subparagraph 1.b.	For Applicant.
Subparagraphs 1.c. through 1.e.	Against Applicant.
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a. and 2.b.	Against Applicant
Paragraph 3, Guideline K:	AGAINST APPLICANT
Subparagraphs 3.a.	Against Applicant

Paragraph 4, Guideline E:

AGAINST APPLICANT

Subparagraph 4.a:

Against Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge