



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



In the matter of: )  
)  
) ISCR Case No. 12-09417  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

02/12/2013

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, financial considerations and Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On August 24, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. On December 7, 2012, DOD issued Applicant an amended SOR detailing additional security concerns under Guideline B. The actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on September 4, 2012, and requested a hearing before an administrative judge. He answered the amended SOR on December 15, 2012. The case was assigned to me on January 3, 2013. Applicant requested the hearing be held during a ten-day period to accommodate his schedule. His request was granted. DOHA issued a notice of hearing on January 14, 2013. The hearing was to be held on January 23, 2013, but was postponed until January 24, 2013, due to a travel delay. The Government offered Exhibits (GE) 1 through 6, and they were admitted into evidence without objection. Applicant testified and offered Exhibits (AE) A through D, and they were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 1, 2013.

### **Request for Administrative Notice**

Department Counsel submitted a request that I take administrative notice of certain facts relating to Egypt. Applicant did not object and the request was approved. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted all SOR and amended SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old. He has never been married and has no children. He is engaged to an American citizen. He has worked for a federal contractor since 2011. He is a linguist serving in a foreign country. He was born in Egypt and earned his college degree there in 2002.<sup>1</sup>

In 1999, Applicant's mother was selected in an immigration lottery that permitted her and her family to immigrate to the United States. Applicant moved with his parents, but traveled back and forth to Egypt to continue his college studies. His brother also attended college in Egypt and traveled back and forth. His parents would travel back and forth to the United States twice a year to maintain their permanent resident status in the United States until 2004 when they permanently moved to the United States. They applied for U.S. citizenship in November 2012 and are waiting for their application to be approved.<sup>2</sup>

Applicant's father was a travel agent in Egypt. He was working for an international company before moving to the United States. He retired in 1999 and received a lump-sum pension that he took with him when he moved to the United States. Applicant's mother did not work outside the home. Both parents reside with Applicant, who pays all of their living expenses. His mother has two brothers who are citizens and residents of the United States. She has a third brother, Applicant's uncle,

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<sup>1</sup> Tr. 27, 91.

<sup>2</sup> Tr. 68-70, 73-80.

who is a citizen and resident of Egypt. Applicant has minimal contact with his uncle, talking with him once or twice a year. He last visited his uncle in 2006. Applicant sends his uncle \$50 a month to give to a church as a charitable donation to support a child from the church. Applicant's father has no contact with any family in Egypt. Neither parent has any contact with the government of Egypt.<sup>3</sup>

Applicant applied for U.S. citizenship in 2002, but was denied. He believed it was because he did not earn enough money. He reapplied and became a naturalized citizen in 2009. His brother became a naturalized citizen in approximately 2005. His brother married in 2006. He met his wife in the church choir. His brother's wife is a permanent resident of the United States and a citizen of Egypt. She works for an American company in the United States, where they reside. Applicant has regular contact with his brother and sister-in-law.<sup>4</sup>

Applicant and his brother were not conscripted into the Egyptian armed forces because they moved from Egypt before they met the age requirement and then they were exempted because they were attending college. Applicant noted that it was difficult to have a career in the Egyptian military because members of his religion were discriminated against and they could not serve in any leadership capacity.<sup>5</sup>

Applicant's parents own an apartment in Egypt. It has been vacant for about six to eight years. Applicant lived there when he was attending college in Egypt. His uncle checks on the property occasionally. Applicant estimated the apartment's worth to be around \$100,000. His parents do not want to give up the apartment. They do not intend to return to Egypt.<sup>6</sup>

Applicant has a college friend who is Egyptian. He last saw him in 2006 when the friend visited Applicant in the United States. They exchange occasional text messages. His friend used to work in Cairo for a foreign airline, but he does not know where he works today.<sup>7</sup>

In 2003, Applicant purchased a house as an investment. In 2005, Applicant began investing in real estate to make a living. He used his savings to purchase two houses. He was able to sell them. He retained the first house he purchased in 2003. He was able to obtain loan modifications on this property after the interest rates rose. He is

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<sup>3</sup> Tr. 31, 57, 64-65, 81, 83-86, 99-100.

<sup>4</sup> Tr. 70-73, 79, 81-83, 98.

<sup>5</sup> Tr. 87-89.

<sup>6</sup> Tr. 65-68, 83.

<sup>7</sup> Tr. 86-87.

current with all of his payments since the modifications were approved. He rents the house and the rent covers the mortgage.<sup>8</sup>

Applicant next obtained a loan to purchase undeveloped property to build a house. The housing market collapsed before the house was completed. Applicant's first mortgage on the property was \$189,400 (SOR ¶ 1.b) and the second was for \$53,576 (SOR ¶ 1.a). When the house was completed, Applicant unsuccessfully tried to sell it, so he tried to rent it. He had an adjustable interest rate on the mortgage and it increased. He could not get enough rent to cover the mortgage. He was unable to get a loan modification because the house was not his primary residence. He made payments on the house for about three years, at which point he was unable to pay the mortgage and defaulted. He did not pay the mortgage for about 11 months. The house was foreclosed in January 2009, and the creditor resold the property.<sup>9</sup> Applicant received an Internal Revenue Service (IRS) Tax Form that required he claim the amount forgiven as earned income. It does not appear he owes a deficiency on the first mortgage. He filed the IRS form with his federal income tax return. He paid the amount that he owed.<sup>10</sup> The debt in SOR ¶ 1.b is resolved.

In the past, Applicant attempted to negotiate a settlement on the second mortgage debt in SOR ¶ 1.a, but the creditor wanted more than Applicant could afford at the time. Recently, the creditor agreed to settle the debt. Applicant is to pay \$8,037 in three increments. He made the initial \$4,000 payment on December 21, 2012. He is required to make payments on January 30, 2013, and February 27, 2012, of \$2,037 and \$2,000 respectively.<sup>11</sup> This debt is being resolved.

Because of the foreclosure, Applicant became a financial risk and two of his credit cards that had been current were closed. Applicant contacted the creditors and was told he had to pay the cards in full. He was unable to do so, which caused the accounts to go to collection. Applicant made arrangements to settle the accounts and paid them off in late 2010.<sup>12</sup>

Applicant earns a salary of approximately \$175,000 and has about \$95,000 in savings. He is meeting all of his financial obligations. Applicant owns his own home and is current on his mortgage. He stated he has learned his lesson about taking financial risks.<sup>13</sup>

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<sup>8</sup> Tr. 33.

<sup>9</sup> Tr. 44-50; AE A.

<sup>10</sup> Tr. 23-27, 30, 37-43, 96-97.

<sup>11</sup> Tr. 21-23 43-44, 57-63; AE B, C, D.

<sup>12</sup> Tr. 94; GE 1.

<sup>13</sup> Tr. 28-30, 32-36.

Applicant provided a character letter from an Army chaplain serving with him during his overseas employment. She served with him for eight months where he translated and helped with numerous humanitarian missions. She considered him a reliable partner, willingly giving his time and energy to the mission, even when it required overtime hours and extra work. He is considered the “go to” linguist and has assisted many soldiers and commanders. The chaplain believes Applicant to have impeccable character and is a thoughtful peer. He is a friend to soldiers and civilians in the camp. He is a true colleague and professional.<sup>14</sup>

## **Egypt**

The United States and Egyptian relationship has entered a period of uncertainty, in the wake of President Mubarak’s resignation in 2011, after 29 years in office. The Supreme Council of the Armed Forces (SCAF), consisting of military officers in leading positions under Mubarak, at one point exercised executive authority, but it has officially ceded power to newly elected President Muhammad Morsi. He has consolidated his power around his administration and a broader network of Muslim Brotherhood supporters at the expense of the military.

In the past, the United States and Egypt have enjoyed a strong and friendly relationship based on mutual interest in Middle East peace and stability, revitalizing the Egyptian economy, strengthening trade relations, and promoting regional security. However, U.S.-Egyptian opportunities for diplomacy may be overshadowed by disruptive trends that have been unleashed by the “Arab Spring” allowing for more anti-Americanism, radical Islamist politics, and antipathy toward Israel and sectarianism.

There are instances of instability and public disorder in Egypt. There have been demonstrations that have degenerated into violent clashes between police and protesters, with numerous deaths and injuries. There is ongoing and increased sectarian violence against religious minorities that have resulted in deaths and instability. Egypt has suffered numerous terrorist attacks over the years where foreigners have been killed, injured, and kidnapped. Some victims were Americans. In April 2011, Egypt released 16 members of a terrorist cell with ties to al-Qa’ida, which was formed to target tourists and Christians.

Egypt’s Northern Sinai region remains a base for smuggling arms and explosives into Gaza. In addition, the smuggling of humans, weapons, cash, and other contraband through the Sinai into Israel and the Gaza Strip has created criminal networks that may be associated with terrorist groups in the region. Human rights violations and abuse of power was prevalent during the 2011 uprising.

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<sup>14</sup> Answer.

## Policies

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

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

Section 7 of Executive Order 10865 provides that 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

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's parents, who live with him, are citizens of Egypt and permanent residents of the United States. His sister-in-law is an Egyptian citizen and a permanent resident of the United States. His uncle and a friend are citizens and residents of Egypt. His relationships could potentially create a heightened risk of foreign inducement, manipulation, pressure, or coercion. I find the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8. The following are potentially applicable:

- (a) the nature of the relationship 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 and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; 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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. Applicant's parents and sister-in-law are citizens of Egypt who live in the United States and are permanent residents. His uncle and friend are citizens and residents of Egypt. It is clear that Egypt has numerous terrorist organizations that target U.S. citizens. Egypt's human rights record is poor.

Applicant's parents immigrated to the United States in 1999, and there is no evidence that they intend to return to Egypt. They live with and are financially supported by Applicant. They continue to own an apartment in Egypt, but there is no evidence that Applicant's parents have contact with the Egyptian government. They have applied for citizenship in the United States. Their sons and daughter-in-law live in the United States. Applicant is obviously close to his parents. The residence in the United States and support by Applicant make it highly unlikely that Applicant will be placed in a position of having to choose between the interests of his parents and those of the United States. Considering the strong familial ties in the United States, it is highly unlikely that even with an apartment in Egypt that this could be used to exploit Applicant or his parents. Applicant's sister-in-law also has strong ties in the United States. Although she is an Egyptian citizen, she is a permanent resident of the United States. Her husband, Applicant's brother, is a U.S. citizen. It is unlikely Applicant would be in a position to be exploited because of his relationship with his parents or his sister-in-law. I find AG ¶ 8(a) applies to both Applicant's parents and sister-in-law. I conclude AG ¶¶ 8(b) and 8(c) do not apply because Applicant has more than a casual relationship with his parents and sister-in-law, and his sense of loyalty to them is not considered minimal.

With regards to Applicant's relationship with his uncle in Egypt and his friend, I find AG ¶ 8(c) applies. Applicant has minimal contact with both persons. He uses his uncle as a conduit to donate money to a charity and he occasionally sends text messages to his friend. These relationships are not sufficiently close to be exploited.



## **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had two delinquent debts relating to a house he owned that was foreclosed due to nonpayment. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was involved in purchasing houses and reselling them for profit. When interest rates rose and the real estate market became unstable, he was unable to pay the mortgages on his investment. The debt in SOR ¶ 1.a was resolved through the sale of the house and Applicant was issued an IRS form, which he filed and paid the required taxes. He recently negotiated a settlement agreement for the delinquent second mortgage in SOR ¶ 1.b. He has made one payment and has the resources to complete the payment plan. Because he is still making payments, I find AG ¶ 20(a) does not apply as the debt is recent and being resolved.

Applicant assumed the risk when he entered the real estate market as a business to buy and sell homes. When the market was good, he made money. When the market had a downturn he was overextended and could not meet his payments. He had adjustable rate mortgages. Although he could not anticipate the economic future at that time, as an investor and not just a person buying a primary residence, he was aware that the adjustable interest rates had a possibility of going up. He did not plan for that possibility, which is the risk one takes with this type of mortgage. I find AG ¶ 20(b) does not apply because Applicant was in the real estate business and was aware of the potential risk with this type of financing.

There is no evidence Applicant sought financial counseling. He has resolved the debt in SOR ¶ 1.b when the house was sold and he filed and paid the resulting taxes. He has settled and is in a payment plan regarding the remaining debt in SOR ¶ 1.a. He has the resources to complete the payment plan within the next month. Applicant also showed good faith when he resolved other debts that were not part of the SOR and were a consequence of his financial difficulties. I find AG ¶¶ 20(c) and 20(d) apply.

### **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(a):

- (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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has sufficiently mitigated the security concerns raised by his family connections to Egypt. Applicant had financial problems when he was unable to make mortgage payments on his real estate investments. He has resolved his financial difficulties. Applicant has met his burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the foreign influence and financial considerations guidelines.

### **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 F:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge