



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 13-01085  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: Barry M. Sax, Attorney At Law

May 20, 2014

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**Decision**

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LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on March 15, 2013. (Government Exhibit 1.) On November 6, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was 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) and effective within the Department of Defense for SORs after September 1, 2006.

The Applicant responded to the SOR on December 13, 2013, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to this Administrative Judge on January 29, 2014. A notice of hearing was issued on February 13, 2014, scheduling the hearing for February 26, 2014. Applicant's counsel requested a continuance based upon good cause that was granted and the matter was set for hearing on March 25, 2014. The Government presented two exhibits, referred to as Government Exhibits 1 and 2 that were admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I that were admitted without objection. The Applicant also testified

on his own behalf. The record remained open until close of business on April 4, 2014, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted two Post-Hearing Exhibits referred to as Post-Hearing Exhibits 1 and 2. The official transcript (Tr.) was received on April 7, 2014. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel submitted a request that I take administrative notice of certain facts concerning the current political condition in Egypt. (Tr. pp. 12-14 and 21-22.) The Applicant had no objection. (Tr. p. 22). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 37 years old, and married with two children. He has a Bachelor's Degree and is employed as the Chief Information Officer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Egypt to an Egyptian family that valued education. He grew up with a passion for computers and technology. Wanting the best education possibly, he attended a private high school in Cairo. Fascinated by what he had heard about the American culture, and the fact that he believed he could get the best education in America, in 1995, he came to the United States on a student visa to attend a university where he obtained his bachelor's degree in Computer Science. He also met his wife at the university. As soon as he was eligible, he applied for United States citizenship. In 2004, Applicant began working for his current employer. He started as a Software Engineer and has worked his way up in the company. In 2009, he married his wife, an American citizen, and they have two children who were born here. In 2012, Applicant became a naturalized citizen, and received a United States passport.

Before becoming a naturalized American citizen, Applicant used his Egyptian passport to travel to Egypt to visit his parents about once or twice a year. That foreign passport was issued on February 12, 2009 and expires on February 11, 2016. In 2011, both of his parents became ill. Within eight months of each other, both parents passed away. His father died at the end of 2011, and his mother passed away in August 2012. After becoming naturalized, he has used only his American passport for travel.

In 2012, upon their death, Applicant inherited property in Egypt from his parents. He inherited real estate worth approximately \$590,000; a bank account and stock worth \$202,000; and he is co-owner of a family business worth an estimated \$50,000. Applicant is presently in the process of liquidating his assets in Egypt. The capital transfer limits in effect in Egypt between 2011 and 2014 only allowed a total of \$100,000 to be transferred. The guidelines have since relaxed and capital transfer limits are now \$100,000 per year. Applicant started the process in 2011 when he transferred \$100,000 to the United States. During his most recent trip to Egypt in 2014, he transferred \$95,000 in wire and took \$5,000 in cash. He has instructed the bank in Egypt to transfer all of the remaining money as soon as it is possible. He currently has \$102,000 in his bank account, \$590,000 valued in property and \$50,000 of his father's business. Applicant is committed to transferring everything he has inherited to the United States as soon as Egyptian law permits. (Tr. Pp. 50-56.) Applicant explained that the only reason he has kept his Egyptian passport was because the Egyptian Government required it as a form of identification in order to facilitate his Egyptian banking and property interests. All of the arrangements have been completed concerning the transfer of his foreign assets and he no longer needs his foreign passport. (Applicant's Exhibit B.) Upon his return to the United States, the Applicant immediately surrendered his foreign passport to his Facility Security Officer. (Applicant's Exhibit C.)

Applicant has one brother who is a citizen and resident of Egypt. He is a business man who is in the oil service industry. (Tr. p. 36.) He has no association with the Egyptian Government. Applicant's brother is buying him out of the family house and the business. (Tr. p. 55.) Applicant testified that he is respectful toward his brother in Egypt, but they are not close. (Tr. p. 61.) He is eight years older than the Applicant, they have no common interests or friends, and their only contact revolves around the liquidation plan concerning the inheritance. In the past three years, he has seen him twice. His brother does not know where the Applicant works or what he does in the United States.

Applicant's personal financial statement dated March 25, 2014, shows that his net worth in the United States is approximately \$1.7 million. (Applicant's Exhibit E.) He has more assets in the United States than he does in Egypt. In the United States he has purchased a house, an investment property, and cars. He has bank accounts, an IRA, and stocks. He has purchased nothing in Egypt. All of his assets there were inherited from his parents. After all of his monthly expenses are paid he has \$4,000 in discretionary funds left. (Tr. p. 58.) He testified that as his money is transferred from Egypt to the United States, he plans to use the money to pay off his mortgages.

Paragraph 2 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

Applicant's Egyptian passport was issued to him on February 12, 2009, and expires on February 11, 2016. After becoming a United States citizen, Applicant did not use it for travel. (Applicant's Exhibit D.) He kept the foreign passport solely as a form of identification in order to conduct banking and property transactions in Egypt concerning

his inheritance. All arrangements to have these assets transferred to the United States have been secured and he has surrendered the passport to his Facility Security Officer.

A letter of recommendation from the Applicant's Chief Executive Officer, who is also the Facility Security Officer, dated March 3, 2014, indicates that Applicant is well respected, professional, competent and trustworthy. The company relies heavily on his technical and communication skills and trusts him immensely. He is considered a valued member of the company. (Applicant's Exhibit A.)

A letter of recommendation from a long time and close friend of the Applicant he met while in college attests to Applicant's intelligence, professionalism, trustworthiness and reliability. (Applicant's Exhibit H.)

Applicant was selected as a finalist for the 2013 Top Tech Executive Award sponsored by a local magazine. (Applicant's Exhibit F.)

Two letters from the Facility Security Officer both dated March 21, 2014 indicate that Applicant surrendered his Egyptian passport to her on that day. (Applicant's Exhibit I.) Since then, Applicant has destroyed the passport and has no intentions of ever renewing it. (Applicant's Post-Hearing Exhibits 1 and 2.)

The current political situation in Egypt elevates the cause for concern in this case. Egypt, officially the Arab Republic of Egypt, is a transcontinental country spanning the northeast corner of Africa and southwest corner of Asia. There is growing unrest and violence in Egypt. In July 2013, the Egyptian military ousted former President Mohamed Morsi from power. In August of that same year, the army-backed government that ruled Egypt began a violent police crack down against Morsi's mostly Islamist supporters and arrested many leaders and members of the Muslim Brotherhood. Since then, Islamist radical groups in the Sinai have waged an insurgency against the security services. Militants from an array of loosely-organized, Al-Qaeda-style groups have attacked police and army checkpoints and facilities, employing terrorist and guerilla warfare tactics. In September 2013, radicals targeted the Interior Minister in a bombing within Cairo proper, although he escaped unharmed. In August 2013, the Government of Egypt declared a state of emergency. The U.S. Department of State continues to warn U.S. citizens of the risks of traveling to Egypt and strongly advises U.S. citizens to defer all but essential travel because of the continuing political and social unrest. Egyptian security services face an evolving political, legal, and security environment, in which they continue to combat terrorism and violent extremism. Demonstrations have on numerous occasions degenerated into violent clashes between security forces and protesters, and between protesters supporting different factions, resulting in deaths, injuries, and extensive property damage. Egypt's Northern Sinai region remains a transit route for smuggling arms and explosives into Gaza, as well as a base and transit point for Palestinian violent extremists. The smuggling of humans, weapons, cash and other contraband through the Sinai into Israel and the Gaza supported criminal networks with possible ties to terrorist groups in the region.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. *The Concern.* 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.

#### Condition that could raise a security concern:

7. (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 risks of foreign exploitation, inducement, manipulation, pressure, or coercion; and

7. (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

#### Conditions that could mitigate security concerns:

8. (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 U.S.;

8. (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 interest in favor of the U.S. interest.

8. (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

8. (f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

### Foreign Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

#### Condition that could raise a security concern:

10. (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.

#### Conditions that could mitigate security concerns:

11. (a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

11. (b) the individual has expressed a willingness to renounce dual citizenship;  
and

11. (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;

- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress, and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's situation and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion applies*. Mitigating Conditions 8.(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 U.S.*, 8.(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 interest in favor of the U.S. interest*, 8.(c) *contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*, and 8.(f) *the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual also apply*.

It is also noted that the current political situation in Egypt elevates the cause for concern in this case. The evidence shows that the Applicant came to the United States to pursue his college education and made it his home. Over the past nineteen years, he met his wife, had his children, established his work, purchased his home and investments, and has lived the American dream. Since his parents passed away, his only familial contact in Egypt is with his brother, with whom he is not close. His limited contact with his brother concerns their recent inheritance that is not in dispute. They have agreed that Applicant's brother will buy the Applicant's interest in the family house and father's business, as he would like to keep it. Applicant has no emotional ties or close affiliation to anyone or anything in Egypt. Although there are assets there, they are not as important to Applicant as are his immediate family. In fact, all of his life is in the United States. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Under Foreign Preference, Disqualifying Condition 10.(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member*; this includes but is not limited to: (1) possession of a current foreign passport, applies. However, Mitigation Conditions 11.(a) *dual citizenship is based solely on parent's citizenship or birth in a foreign country*, 11.(b) *the individual has expressed a willingness to renounce dual citizenship*, and 11.(e) the



passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated also apply. The Applicant kept his foreign passport as a form of identification for the sole purpose of resolving his inheritance matters in Egypt. He then surrendered it to his Facility Security Officer. Since then, he has destroyed it with no intentions of ever renewing it. He did not use it to travel after he was granted an American passport. He has essentially cut all ties to the country of Egypt. Under the circumstances of this case, I find for the Applicant under Guideline C (Foreign Preference).

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines B and C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.  
Subpara. 1.a.: For the Applicant  
Subpara. 2.b.: For the Applicant  
Subpara. 2.c.: For the Applicant  
Subpara. 2.d.: For the Applicant  
Subpara. 2.e.: For the Applicant

Paragraph 2: For the Applicant.  
Subpara. 2.a.: For the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge