



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 14-02846

Appearances

For Government: Julie R. Mendez, Esq.
For Applicant: William F. Savarino, Esq.

03/30/2015

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on December 11, 2013. On July 28, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B and Guideline C. DOD acted 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) implemented by the DOD on September 1, 2006.

Applicant received the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 23, 2015. A notice of hearing was issued on February 9, 2015, scheduling the hearing for March 12, 2015. Government

Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I received the transcript (Tr.) on March 20, 2015.

Procedural Issue

Department Counsel requested that I take administrative notice of certain facts regarding Egypt. Applicant did not object, and the documents proffered in support of the request were labeled Hearing Exhibit I and entered into the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) with the exception of ¶ 1.a. He denied the sole factual allegation under Guideline C (Foreign Preference). He provided additional information to support his response. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant was born in Egypt in August 1951. He was educated in Egypt, receiving his undergraduate degree in May 1974. (GX 1) Applicant pursued a successful career in Egypt. He joined an accounting firm and worked in that field for about three years. (Tr. 32) He then obtained employment with an international organization with ties to the United States. Applicant believed in the mission of the company, and he was the most senior local hire in Egypt. (Tr. 32) He decided in 1981 to leave Egypt permanently to pursue a career with that company in the United States. He became a naturalized citizen in 1991. He has not held a security clearance. He is currently a retired consultant with the international development firm. (Tr. 27) Applicant has been with this company since 1982.

Applicant's mission in life in the United States has been serving an organization that receives contracts from USAID for international development through a competitive process. The firm operates in about 18 countries around the world. The company implements technical assistance and works with entrepreneurs in Africa and other designated countries. The goal is to improve their abilities to grow, to develop, and to create jobs. (Tr. 30) he has been with the company since the 1980's. (AX D)

Applicant married his wife in 1983. She is a U.S. citizen by birth. They have two adult children who are U.S. citizens. His children are not dual citizens. They possess U.S. passports. (Tr. 39) He has brothers who are U.S. citizens.

Applicant has a sister who resides in Egypt but is a U.S. citizen. She spends time in the United States visiting her daughter who is a U.S. citizen. Applicant's sister lives in Egypt because her husband works as an architect in Egypt. (Tr. 63) When his sister is in Egypt, Applicant calls her about once a month. If Applicant travels to Egypt for work,

he visits his sister. (Tr. 64) Neither his sister nor brother-in-law has any ties to the Egyptian government. They have no knowledge of Applicant's work.

Applicant and his six siblings share ownership of an apartment building in Egypt. Applicant's sister lives in one of the units. The siblings inherited the apartment building when their father died. (Tr. 44) Applicant explained that since Egypt has rent control the rent cannot change from the original fee. The building does not generate any income. (Tr. 45) It is not possible to sell the building according to law and it cannot be torn down. Thus, the property has no real value. (Tr. 46) There are no property taxes.

Applicant has two vacation properties in Egypt. He purchased the first one in 2001. It is located in a resort complex. This is an area where Applicant and his family spent summers when he was growing up. It is an apartment in a gated complex. Applicant purchased the property for \$50,000. In 2012, Applicant purchased a villa on the beach in a gated community. He paid about \$750,000, for the property. He is also spending about \$300,000 in renovations. Both properties were paid for in cash. He plans to use the villa as a beach home. It is not an investment property. Applicant does not rent the villa.

Applicant was clear that despite the sentimental value and economic value of his property in Egypt, neither would cause him to betray the United States. While he would certainly like his home and apartment to remain, it is not determinative of his loyalty to the United States.

Applicant maintains about \$10,000 in an Egyptian bank to use for the renovations. Applicant legally transfers money from his U.S. bank account to the account in Egypt. Once the renovations are complete, Applicant will close the account in Egypt. (Tr. 53)

Applicant's assets in the United States are quite substantial. He owns his own home in the United States, which does not carry a mortgage loan. He submitted a detailed balance sheet of all assets in the United States. After accounting for liabilities, he is worth approximately \$29 million. (AX A, Tab A)

Applicant's Facility Security Officer (FSO) testified that she has known Applicant for 20 years. She also worked in the finance department and reported directly to him. (Tr. 16) The FSO testified that Applicant is very trustworthy. He always follows rules and procedures in a regulated environment.

Applicant also submitted an affidavit from the CEO of the international firm where Applicant consults. She has known him since 1992. She has worked directly and indirectly for him. Applicant was president of the company from 2000 until 2006 when he retired. She traveled with him to various projects around the globe. The CEO states that after knowing Applicant for 22 years, she knows him quite well. She states that Applicant has an impeccable reputation within the entire business community. His honesty, reliability, and dependability are without question. The CEO knows the reason

for the security concerns and vouches for his love for and loyalty to the United States. Applicant has spent his adult life supporting the U.S. Government's interests in one form or another. (AX A, Tab B)

Foreign Preference

Applicant does not have a valid Egyptian passport. (Tr. GX 2) His Egyptian passport expired in 2007. He has a U.S. passport. He traveled to Egypt in 2008 and 2013 and used his U.S. passport.

Applicant voted in the 2012 Egyptian election. He has never voted in any other Egyptian election since coming to the United States. This election was of such import, he felt compelled to register his vote in a democratic election. (Tr. 57) Applicant went to the Egyptian Embassy in Washington, DC to cast his vote. Applicant understood that this was an historic moment for Egypt. (Tr. 58) He believed that this election was a milestone and a clear direction for the country. He felt it was the right thing to do. Applicant voted not for Egypt but for the significance of the democratic process. He has no intention of voting in an Egyptian election again. (Tr. 60) Applicant has voted in local, state and national U.S. elections since becoming a U.S. citizen.

Although the United States did not condone the fact that Applicant voted in the 2012 Egyptian election, the U.S. Government was certainly enthusiastic about the election and many government entities lauded the election. (AX A, Tab C and F)

Administrative Notice

Egypt is the most populous country in the Arab world and the second-most populous on the African continent. Egypt is undergoing a historic political transition after a popular revolution which began in January 2011 and forced the resignation of Egyptian President Hosni Mubarak. Although U.S. policy toward Egypt has long been framed as an investment in regional stability in the Middle East, the relationship has now entered a period of profound uncertainty. In the wake of Mubarak's resignation, a Supreme Council of the Armed Forces (SCAF), consisting of military officers in leading positions under Mubarak, exercised executive authority, but officially ceded power to newly elected president Muhammad Morsi on June 30, 2012. President Morsi has since consolidated power around his administration and a broader network of Muslim Brotherhood supporters at the expense of the military. On July 3, 2013, the Egyptian military ousted President Morsi from power. In mid-August, the army-backed government, which has ruled Egypt since the July 3 ouster began a violent crackdown against Morsi's mostly Islamist supporters, and arrested many leaders and members of the Muslim Brotherhood. On August 14, 2013, the Government of Egypt declared a State of Emergency.

In the past, the United States and Egypt have enjoyed a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, revitalizing the Egyptian economy, strengthening trade relations, and promoting regional

security. Yet even taking into account their mutual interests and military cooperation, 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 policies, and antipathy towards Israel and sectarianism.

There have been instances of instability and public disorder in areas of Egypt. Recently demonstrations in downtown Cairo, near Tahrir Square turned violent and resulted in numerous deaths and injuries. In the last year, demonstrations have degenerated on several occasions into violent clashes between police and protesters, in some instances resulting in deaths and injuries.

Egypt has suffered from numerous terrorist attacks over the years. Major terrorist attacks, where foreigners have either been killed or kidnapped, have occurred as recently as July 2012. Americans have been the victims of some of these terrorist attacks.

Criminal networks that may be associated with terrorist groups in the region, including Hezbollah, have used tunnels located in Egypt to smuggle humans, weapons, and other contraband into Israel and the Gaza strip. In addition to terrorism, extremist activity in certain areas of Egypt has created instability and public disorder. The government continues to build and augment its capacity to counter terrorism and extremist ideologies.

Egypt is a country in transitional turmoil. Egypt is now mainly under the control of an interim government managed by the military. However, Egypt has been a staunch ally of the United States since the time of Anwar Sadat and the Peace Treaty with Israel in the 1970’s.

Policies

“[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 made “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, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[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

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

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.

Two disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “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.” AG ¶ 7(a). In addition, AG ¶ 7(e) provides that “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 or foreign influence or exploitation.”

AG ¶¶ 7(a) and 7(e) are raised by Applicant’s relationship with his sister who lives in Egypt, as well as by his property in Egypt.

Guideline B is 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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., 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 government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The Government submitted country summaries of Egypt. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationship with his sister living in Egypt does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his sister living in Egypt.

I conclude that Applicant's ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. This relationship with his sister in Egypt creates a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his sister in Egypt.

The mere possession of close ties with a family member in Egypt is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could possibly result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case NO. 99-0424 (App. Bd. Feb. 8, 2001).

While there is no evidence that intelligence operatives, terrorists, or criminals from Egypt seek or have sought classified or economic information from or through Applicant or his sister, it is not possible to rule out such a possibility in the future. Applicant owns a share of an apartment building in Egypt. He also owns two resort properties in Egypt. The Government produced substantial evidence to raise the potential of foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing "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." AG ¶ 8(b).

AG ¶ 8(f) provides additional mitigation if "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."

AG ¶¶ 8(a), 8(b), and 8(f) are applicable. Applicant's sister is a U.S. citizen who travels to the United States. She has a daughter who lives in the United States. Applicant has no other family in Egypt. Applicant does have some telephone contact with his sister during the year. The amount of contacts between an applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced or influenced through their relatives.

AG ¶ 8(b) is applicable. Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 1982. Egypt is an ally of the United States with mutual defense and strategic interests. Egypt is a substantial trading partner of the United States and cooperates with the United States on many military matters. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. I have also considered the ongoing situation in Egypt with an unstable government, extensive terrorist activities, and human rights issues. Even though Egypt is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that the situation and groups in Egypt could take an action that may jeopardize their friendly position with the United States. There are some indications that elements in Egypt could seek sensitive information from their citizens who have family in the United States.

Applicant has strong ties to the United States. He left a comfortable life in Egypt to work with an international company that promotes U.S. interests in the world. He is a naturalized citizen who has spent about 33 years working in this country. His wife was born in the United States and his children are U.S. citizens. He has substantial wealth in the United States. He has firm ties to the United States and considers it his home. He embraced the culture, history and lifestyle of the United States.

Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. There is no risk to the national interest if Applicant has access to classified information. Applicant has met his heavy burden to show that his sister living in Egypt does not cause a security concern.

AG ¶ 8(f) is also applicable. Applicant has substantial wealth in the United States. His portfolio reveals about \$29 million. His properties in Egypt amount to about 3% compared to his wealth in the United States. He also was adamant that the loss of the properties would not influence him to betray the United States.

Guideline C, Foreign Preference

The security concern under this guideline 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 or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Under AG ¶10, the following disqualifying condition is relevant:

(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: . . . (7) voting in a foreign election.

In 2012, Applicant voted in the Egyptian presidential election. He testified that this was such a rare moment in history that he wanted to show his support for the democratic process. He voted in the Embassy in the United States. Applicant voted to support the opposition, as a way to institute change and to encourage democracy and to improve relations with the United States. He did not have a security clearance at the time. He has no intention of voting in any other Egyptian elections. He votes in U.S. elections.

None of the mitigating conditions listed under AG ¶11 specifically apply to disqualifying condition AG¶ 10(a)(7). However, Applicant's history and conduct show that he is unlikely to make decisions that would harm the United States. On the contrary, he has spent many years in the United States supporting the United States. Applicant's voting did not express a preference for Egypt, but showed his opposition to the current regime.

Whole-Person Concept

Under the whole-person concept, an 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. An 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 have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are substantial facts supporting mitigation of security concerns. Applicant has lived in the United States since 1981. He is a naturalized citizen and his wife is an American citizen by birth. His children are U.S. citizens. He has one sister who is a U.S. citizen but lives in Egypt. Applicant has been quite successful in his work. He and his wife share a life in the United States. Applicant has about \$29 million in net worth in the United States. He is praised by the company for his many years of dedication. He would resolve any issues in favor of the United States.

Applicant was candid about his properties in Egypt. He has some ownership in an apartment building where his sister lives. He owns an apartment and a villa in Egypt. He has a current bank account in Egypt so that he can pay for renovations to the property he bought in 2012. These properties are of minimal value compared to his wealth in the United States.

Applicant voted in an historic election in 2012. He believed it was the right thing to do. The United States did not condone such a vote, but was enthusiastic about the election. He does not plan to vote in any other Egyptian elections. Applicant votes in U.S. elections.

After weighing the disqualifying and mitigating conditions under Guideline B, and Guideline C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline C,	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge