



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



In the matter of:)
)
-----) ISCR Case No. 14-01536
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

12/08/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated security concerns regarding his family members, who are citizens, residents, or citizen-residents of Egypt. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On June 30, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). 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) effective within the DOD on September 1, 2006.

In an undated letter, Applicant admitted all four allegations raised and requested a hearing. I was assigned the case on October 20, 2014. On October 28, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for November 14, 2014. The hearing was convened as scheduled.

The Government offered two documents, which were accepted into the record without objection as exhibits (Exs.) 1-2. Ex. 2 is a request for administrative notice

regarding certain facts related to the country of Egypt. Applicant gave testimony, introduced one witness, and introduced a packet of materials that was accepted into the record without objection as Ex. A. The transcript (Tr.) of the proceeding was received on November 25, 2014. The record was then closed. Based on a through review of the case file, I find that Applicant carried his burden in mitigating security concerns arising under Guideline B.

Request for Administrative Notice

Department Counsel submitted a Request for Administrative Notice regarding certain facts about the nation of Egypt. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (*citing* ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from Government reports.

Egypt

Egypt is the most populous country in the Arab world. In the past, it has been a strategic partner of the United States and the countries have enjoyed a strong friendly relationship. The United States is facing a series of challenges stemming from dramatic changes in Egypt. Its recently deposed President, Muhammad Morsi, is part of the Muslim Brotherhood, and the extent of his cooperation with the United States on some security and economic matters was unclear. He was deposed by elements of the Egyptian military and analysts are concerned about the impact of this change on the Egyptian democracy, relationships of Egypt and Israel, and continued cooperation with the United States on intelligence and terrorism-related issues. Moreover, the Muslim Brotherhood maintains widespread followers in Egypt and may be able to regain power.

Political protests and demonstrations have turned violent numerous times in the past year. There are instances of instability, public disorder, and extremist activity in Egypt. Following the revolution of January 2011, the number of criminal incidents has increased throughout the country, including crimes against foreign visitors. This is likely attributable to a reduction in overall police presence and diminished authority of police on the street.

Due to the political climate after the January 2011 revolution, there is a potentially more permissive operating environment for terrorist groups, including al-Qaeda, which the U.S. State Department designated a foreign terrorist organization.

Egyptian human rights abuses are common. Violent clashes with police and military at demonstrations are a continuing concern. Problems also include torture, arbitrary arrests, limits on the judiciary, and restrictions on civil liberties.

The threat of terrorism in Egypt remains high and transnational terrorist groups and local terrorist groups pose threats in Egypt despite Egypt's aggressive pursuit of terrorists and extremism. In 2003, Egypt discovered and disrupted a terrorist plot against U.S. interests. Between 2004 and 2006, Egypt suffered a series of deadly, coordinated terrorist bombings, which caused many deaths and hundreds of injuries, including U.S. citizens. Although the Egyptian government took measures against the perpetrators of the attacks, there is a persistent, indigenous threat of terrorist activities. In April 2009, the Egyptian government uncovered a Hezbollah cell clandestinely operating in Egypt.

Terrorists use overt, covert, and clandestine activities to exploit and undermine U.S. national security interests. These nongovernmental terrorist organizations currently target the United States for intelligence collection through human espionage and other means. Some such terrorist groups conduct intelligence activities as effectively as state intelligence services. Egypt persists in fighting such factions within its borders and abroad.

Findings of Fact

Applicant is a 27-year-old design coordinator who has worked for the same defense contractor since July 2013. He was born and raised in Egypt. In 2005, his aunt got Applicant and his family members green cards to come to the United States. After high school graduation that year, he came to the United States to continue his education and be near his elder sister, with whom he is very close. She had come to the United States in 1999 and already was a United State citizen.

From 2006 until 2013, Applicant attended a local university, earned an associate's degree, a bachelor's degree in civil engineering, and worked several jobs in order to pay for his education. In the interim, after a five-year waiting period following his receipt of a green card, Applicant became a naturalized U.S. citizen, formally renounced Egyptian citizenship, and surrendered his Egyptian passport in 2011. Since graduation, he has worked for his present employer. He is happy with his work, career choices, and professional prospects.

Remaining in Egypt as residents and citizens are Applicant's mother, father, and brother. All three work in the private sector as a semi-retired dentist, semi-retired physician, and veterinarian/farmer, respectively. They speak with Applicant on the phone about family issues, but do not discuss Applicant's work. Applicant speaks with his parents once or twice a week, and infrequently speaks with his brother by telephone. Most of the rest of Applicant's family, such as uncles, aunts, and cousins, are U.S. citizens or residents seeking U.S. citizenship. Tr. 22. None of them have a nexus to a foreign military or receive state benefits. They are financially well-situated, but do not live extravagantly.

In his security clearance application, Applicant also noted some friends as foreign contacts from Egypt living in the United States. Of those individuals, one male

friend has since become a U.S. citizen; one has become a citizen and resident of Canada; one has a green card and is seeking U.S. citizenship; and a fourth currently lives in the United States with a work permit. None know of Applicant's work. Today, most of Applicant's friends and associates are U.S. citizens Applicant has met since coming to the United States. He has readily assimilated into his new culture and environs.

Applicant has no investments, business or real property interests, or financial holdings abroad. His bank account and retirement accounts are maintained here. He is happy within his community and with his extensive interaction with his older sister and her family. He is very active with his local church, where he works with fellow parishioners and youth groups. He also volunteers for various community activities. It is his intent to remain in the United States, continue to build a life here, and maintain his closeness with his sister and her family.

Applicant's last trip to Egypt was three years ago; he has no present intention of returning. His mother visits every year or two. His father generally does not travel due to ill health, but may attempt to visit the United States at the end of 2014. Applicant is up-to-date with all of his security-related training and certifications. His facility security officer wrote him a positive recommendation that uses superlative terms.

Applicant's main reason initially for moving to the United States was to be close to his elder sister. She played a significant role in his upbringing and continues to be a strong influence in his life. She became a U.S. citizen a number of years ago. She encouraged Applicant to move to the United States to seek new opportunities. They have lived together while in the United States. Applicant is close to her family, especially her children, with whom he spends a great deal of time. She recommended Applicant for his present position. She has a security clearance. Despite parents and a sibling abroad, they constitute their own supportive and nurturing family unit here in the United States.

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 not drawn 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.

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

The security concern relating to the guideline for Foreign Influence 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.

As a threshold issue, it is noted that while Egypt does not target United States citizens to obtain protected information. However, nongovernmental terrorists operate in, and terrorist activities take place, within its borders. Moreover, while Applicant has affection for his parents and brother, it is clear that his familial loyalty to his elder sister and her family is reciprocal and superior to his relationships with his kin in Egypt.

It is undeniable that Applicant has ties of affection for his parents and brother in Egypt. By telephone, he speaks with his parents weekly, and less frequently with his brother by telephone. He has visited his family abroad and his mother visits the United States, where it may be assumed she meets with her children and other extended family living in the United States. Such ties maintained with citizens and residents of Egypt constitute a heightened risk of foreign influence. Disqualifying conditions AG ¶¶ 7(a) and (b) apply:

AG ¶ 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 risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(b) connection 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.

In finding disqualifying conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. As noted, terrorist activities have transpired within Egypt. This fact is sufficient to find a heightened risk exists in this case. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an applicant may be subject to coercion or undue influence when a third party pressures or threatens an applicant's family members. Under these facts, a third party coercion concern potentially exists in Egypt. Therefore, the evidence provided is sufficient to raise the above disqualifying conditions.

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

AG ¶ 8(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, or government and the interests of the U.S., and

AG ¶ 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 interests in favor of the U.S. interests.

Applicant has the burden to demonstrate evidence to refute or mitigate the allegations.

The mere possession of close family ties to persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Here, Applicant's parents and brother are residents and citizens of Egypt; Applicant's foreign friends who posed earlier concerns have moved or become citizens of either the United States or Canada. The nature of the foreign country must be considered in evaluating the likelihood of exploitation. The United States and Egypt have a long, amicable history, and a joint interest in fighting terrorism. It is unlikely that Egypt would take an interest in Applicant or his relatives, especially given their unobtrusive lifestyles and activities, and there is no evidence indicating Egypt profiles or compromises its citizens as a method to gain sensitive information from its allies. Moreover, it is unlikely that Applicant would have to choose between the interests of his family in Egypt and the interests of the United States. AG ¶ 8(a) applies.

Moreover, it was Applicant's extraordinarily close ties to his elder sister that brought him to the United States. As her family grew, so did his closeness to both her family and to the United States. Ultimately, he chose to settle permanently in the United States as a U.S. citizen, where he has since developed strong ties to both the country and his community. Today, he is active with his church and with various community organizations. He is thriving professionally. He has made new friends to replace those left behind abroad. He maintains warm relations with his parents and brother in Egypt. They speak by phone weekly and his mother visits the United States regularly. Otherwise, they maintain a quiet life in Egypt with no knowledge of their son's work. They have no apparent nexus to the Egyptian government or military, or to terrorist forces. Between his sister and her family in the United States and those abroad, his loyalties are to his family here, as has been apparent since he first chose to immigrate, then become a citizen of the United States. Applicant has no intention of returning to Egypt to live. He maintains no financial, real property, or other interests in Egypt. I conclude that Applicant would choose his significant U.S. ties over his foreign connections, in the event a conflict of interest arose. AG ¶ 8(b) applies.

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(a). 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 incorporated my comments under the three guidelines at issue in my whole-person analysis. Most of the factors in AG ¶ 2(a) were addressed under the above guideline, but some warrant additional comment.

Applicant is a direct and affable 27-year-old man. He has worked as a design coordinator for the same employer since July 2013. Born and raised in Egypt, he accepted his aunt's offer of sponsorship to come to the United States, at least in part to be with his older sister. He and his sister are very close. They lived together for a time, and he is now an integral part of her direct family. Since coming to the United States, Applicant has earned a bachelor's degree in engineering, become a United States citizen, renounced his Egyptian citizenship, and started his professional career. Applicant is now entrenched in his community where he is active with his church, various volunteer activities, and with new friends he has made since coming to this country. He intends to stay in this country as a resident and citizen.

In Egypt, Applicant has his parents and a brother. They maintain regular telephonic contact and Applicant's mother regularly visits the United States, but their relationship does not appear to be as close as the bond he shares with his elder sister and her immediate family. Regardless, his family in Egypt live low-key lives which draw little attention or scrutiny. They do not know what Applicant does for a living. There is scant likelihood they would be the cause for any coercion by a foreign government or terrorist organization to compromise Applicant. As for Applicant's former associates of Egyptian citizenship or residence, all have left Egypt and are now citizens or residents of either the United States or Canada, diminishing their status as security concerns.

When disqualifying conditions are raised, the burden is then placed on an Applicant to proffer facts and evidence in mitigation of the security concerns raised. Here, Applicant presented sufficient information about himself, his sister and her family in the United States, his family in Egypt, and the country at issue to mitigate foreign influence security concerns. Clearance is granted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.d:	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.

Arthur E. Marshall, Jr.
Administrative Judge