



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



In the matter of:)	
)	
)	ISCR Case No.14-01864
)	
)	
Applicant for Security Clearance)	

Appearances

For the Government: Alison O’Connell, Esq., Department Counsel
 For Applicant: Islam Elaktaa, Personal Representative
03/27/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, hearing testimony, and the exhibits, I conclude that Applicant provided adequate information to mitigate the security concerns for foreign influence under Guideline B. Eligibility for access to classified information is granted.

Statement of the Case

On November 21, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. On October 28, 2014, Applicant submitted another e-QIP that was exactly the same as the previous e-QIP (Applicant Exhibit A). The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On June 17, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on September 17, 2014. He admitted four of the seven allegations that concerned relatives who are citizens and/or residents of Egypt.

He denied two allegations concerning his wife and children being citizens of Egypt because they are now United States citizens. He denied SOR allegation 1.f, concerning contact with a friend who is a citizen of the United Arab Emirates.¹ Department Counsel was prepared to proceed on November 12, 2014, and the case was assigned to me on January 9, 2015. DOD issued a notice of hearing on January 23, 2015, scheduling a hearing for February 23, 2015. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 3. Applicant testified, and offered five exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through E. I received the transcript of the hearing (Tr.) on March 20, 2015.

Procedural Issues

Department Counsel requested that I take administrative notice of certain facts concerning Egypt, and provided relevant U.S. Department of State documents. (GX 2) I will take administrative notice of facts concerning Egypt as noted in my Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 52 years old and is a security officer for a defense contractor. He was born in Egypt and did all of his schooling in Egypt. He performed the compulsory year of military service in Egypt from 1986 to 1987. He received a law degree in Egypt in 1985 and practiced law as a sole practitioner until he immigrated to the United Arab Emirates (UAE) in 1990. He was a police investigator in UAE until he immigrated to the United States in November 2007. He married in Egypt in 2004 and has two children born in Egypt in 2005 and 2007. He initially worked in various jobs in the United States until he found a position as a security officer. (Tr. 18-21; GX 1, e-QIP, dated October 28, 2014)

Applicant came to the United States for a better life for him and his family. He had relatives and immediate family members who had been in the United States for many years. His uncle had immigrated to the United States in the 1970s and was a United States citizen. His brother, a doctor, has been a citizen and resident of the United States for over 25 years. His sister was also a long term resident and citizen of the United States but she has died. His mother came to the United States in 2000 and lives with his brother. She is a permanent resident of the United States and is on Social Security. Applicant's father was in the Egyptian military but is now deceased. Applicant's wife and children came to the United States with him in 2007. He and his wife became United States citizens in June 2013. His children became United States citizens in July 2014. Applicant's wife surrendered her Egyptian passport to the Egyptian embassy in the United States in September 2014. His children relinquished their Egyptian passports to Egyptian authorities in July 2014 when they last visited

¹ Department Counsel withdrew this allegation. (Tr. 10)

Egypt. Applicant surrendered his Egyptian passport when he received his United States citizenship and passport in 2013. Applicant's family members have only U. S. passports. Applicant has not been back to Egypt since he left in 2007. His wife and children travel to Egypt about every three years. They have only used their U.S. passports since they became U.S. citizens. (Tr. 21-24, 32-34)

Applicant stated he is no longer concerned with the political and terrorist situation in Egypt. He is now living in the United States and is a U.S. citizen. He is here to take care of his wife and children and to work for a better life. When he became a U.S. citizen, he swore that the United States is his country and he has no loyalty to any other country. He is leading a good life and being a good man in the U.S. (Tr. 37-39)

Applicant has only one other surviving brother. He is a resident and citizen of Egypt and runs the family marine equipment business. He has two surviving sisters who are citizens and residents of Egypt. One is a pharmacist who has been retired for approximately ten years. The other sister is an agricultural engineer. They are married and their husbands are an engineer and a doctor. The doctor is also retired. None of the sisters or brothers-in-law worked for the Egyptian government. Applicant speaks with at least one of his siblings in Egypt by phone a few times a month. He rotates which sibling he talks to each time he calls. They mainly discuss family issues and their health. (Tr. 24-29, 33-35)

Applicant's mother-in-law and father-in-law are citizens and residents of Egypt. Applicant's mother-in-law is a retired worker for the health ministry in Egypt. She does not receive a pension from the government. Applicant's father-in-law is a retired employee of a private mining equipment company. They also have a small farm that they tend. Applicant has applied for an immigration visa for his in-laws that is pending. Applicant's wife has two sisters, one in Egypt and one in Bahrain. Neither sister works. Their husbands do not work for the government but work for private companies as an interior designer and a teacher. (Tr.30-32; AX E, Letter, dated December 31, 2014)

Egypt is a republic with a strong executive, a legislature with 444 popularly elected members and 10 members appointed by the president, and a judicial system based on the continental legal system. The courts have demonstrated increasing independence, and the principles of due process and judicial review have gained wider acceptance. Egypt is the most populous country in the Arab world, with a developing economy and one of the largest armed forces in the region. The U.S. and Egypt have a strong and friendly relationship based on shared interests in achieving Middle East peace, regional security and stability, and strong economic relations. The U.S. has provided Egypt with extensive military and economic assistance, and has helped Egypt modernize its armed forces. The two countries regularly engage in combined military exercises, including deployment of U.S. forces to Egypt. Although Egypt has suffered a series of deadly terrorist attacks, its strong opposition to terrorism and effective intelligence and security services has made Egypt unattractive to terrorist groups. Nevertheless, the northern Sinai region is a haven for criminal networks that smuggle weapons and funds among Egypt, Gaza, and Israel. Terrorist's organizations, including

those operating in Egypt, target the U.S. for intelligence to exploit and undermine U.S. national security interests. Egypt's human rights record is generally poor because of limitations on political activity, arbitrary arrest, prolonged detention, poor prison conditions, and torture and abuse of detainees.

In July 2013, the Egyptian military ousted the president who was backed by the Muslim Brotherhood, radical Islamic group which had waged an insurgency against the security services in the Sinai. There was continued violence in the country with terrorists using guerilla tactics against the military forces. A state of emergency was declared in August 2013 and the U.S. condemned the ongoing violence in Egypt. There were hundreds of terrorists' attacks through September 2013. Terrorists and extremists have used explosive devices and drive-by shootings to target police, security officials, and government institutions resulting in many deaths, casualties, and damage to infrastructure. Foreign tourists, including U.S. citizens were kidnapped in the Sinai in 2012 and 2013. Political protests occur often without warning resulting in violent clashes between police and protestors. There have been reports of gender-based assaults and violence against women particularly in demonstrations. In December 2013, the interim government declared the Muslim Brotherhood a terrorist organization. Egypt is now mainly under the control of an interim government managed by the military.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant 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.

Analysis

Guideline B: 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 the U.S. interest, 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 consideration 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 ¶ 6)

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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation’s government and its relationship with the United States 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 United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.

SOR allegation 1.a alleges a security concern because Applicant’s mother is a citizen of Egypt residing in the United States. Applicant established that his mother has resided in the United States for over 15 years. She has permanent resident status and is registered under social security. Under these circumstances, Applicants mother is not a security concern. I find for Applicant under SOR 1.a.

SOR allegation 1.d alleges a security concern because Applicant's wife is a dual citizen of Egypt and the United States residing in the United States. Applicant's wife relinquished her passport to the Egyptian embassy in the U.S. thereby technically severing her relationship with Egypt. She is only a citizen of the United States. I find for Applicant as to SOR 1.d.

SOR allegations 1.e alleges a security concern for Applicant's two minor children who are listed as citizens of Egypt residing in the United States. Applicant established that his two children are citizens of the United States. They have returned their Egyptian passports to Egyptian authorities. I find for Applicant as to SOR allegation 1.e.

The SOR alleges, and Applicant admits, that his brother, two sisters, two brothers-in-law and his mother-in-law and father-in-law are citizens and residents of Egypt. Applicant's siblings, in-law, and family members who are citizens or residents of Egypt are a foreign influence security concern for Applicant.

Three disqualifying conditions are relevant to the security concerns raised in the SOR under 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;
- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. AG ¶¶ 7(a) and 7(d) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member or contacts living under a foreign government. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The Government has established that Applicant's family in Egypt may be under a "heightened risk" of security concern because of the unstable government, terrorist threat, intelligence activities, and human rights violations in Egypt. An applicant with foreign family or friendship ties to a country that presents a heightened risk has a heavy burden of persuasion to show that neither he nor the family

members are subject to influence by that country. The totality of an applicant's family and friends ties to a foreign country as well as the tie to the country for each individual person must be considered.

Applicant raised facts to mitigate the security concerns arising from his family members in Egypt. I have considered the following Foreign Influence Mitigating Conditions under AG ¶ 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.;

(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;

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

In evaluating the potential conflict of interest because Applicant's family members are citizens and residents of Egypt, I considered that Egypt is a strong 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 United States citizen through relatives or associates in that country. Even friendly countries may engage in espionage against the United States' economic, scientific, or technical interest. 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 strong indications that elements in Egypt could seek sensitive information from their citizens who have family in the United States.

I have considered Applicant's relationship with his siblings and family who are citizens or residents of Egypt. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. Factors such as an applicant's relatives' obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant's family circumstances post a security concern. Applicant talks to his siblings a few times a

month. His wife has frequent contact with her parents in Egypt. Thus the communications between Applicant and his family members are not casual or infrequent and his family members could create a risk for foreign influence or exploitation. Because of the on-going government instability and terrorist activity in Egypt, Applicant could likely be placed in a position of having to choose between his family members and the U.S. interests. AG ¶ 8 (a) and (c) do not apply.

Applicant has strong ties to the United States. He came to the United States for a better life for him and his family. He followed his mother and other family members who have been in the United States for many years. He and his wife and children became U.S. citizens at the first opportunity. They have all renounced any citizenship connection to Egypt. Applicant has firm ties to the United States and considers it home. He embraced the culture, history, and life style of the United States.

Applicant has been open and candid about his foreign contacts. Applicant's loyalty to the United States is unquestioned. He has family members who have been citizens and residents of the United States for many years. His immediate family, wife and children, are U. S. citizens and residents. Applicant has established through his actions that it is unlikely that he could be placed in a position to choose between any sense of loyalty or obligation to his family members in Egypt and his sense of loyalty or obligation to the United States. In balancing all of the factors mentioned and considered above, I am satisfied 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. The mitigating conditions in AG ¶¶ 8(b) apply. Applicant has met his heavy burden to show that his family members who are citizens and residents of Egypt do not cause a security concern. I conclude that Applicant has mitigated security concerns for foreign influence.

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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant, not single items in isolation, to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant has frequent and close contact with his family members in Egypt. However, Applicant established that he has such strong relationships and loyalties in and to the United States that he can be expected to resolve any conflict of interest in favor of the United States. While access to classified information is not based on a finding of loyalty to the United States, Applicant established his deep and abiding commitment to the protection of United States interests. Applicant and his wife and children are residents of the United States and solely United States citizens and not citizens of Egypt. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has met the heavy burden of mitigating potential security concerns arising from family members in Egypt. Applicant mitigated security concerns arising from foreign influence and access to classified information 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.f:	For Applicant
Subparagraph 1.g:	Withdrawn

Conclusion

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

THOMAS M. CREAN
Administrative Judge