



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



In the matter of:)
)
-----) ISCR Case No. 14-02536
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his security clearance to work in the defense industry. A 62-year-old aerospace engineer, Applicant is a native-born citizen of Egypt who has been a naturalized U.S. citizen since 1987 and a cleared employee working in the defense industry since 1990. He met his burden to present sufficient evidence to explain and mitigate the foreign influence and foreign preference security concerns stemming from his ties or connections to Egypt. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on February 24, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense

¹ Exhibit 1 (for ease of understanding, it will be referred to as a security clearance application or simply an application).

(DOD),² on August 22, 2014, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him access to classified information.³ The SOR is similar to a complaint. It detailed the reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference. He answered the SOR in writing on August 26, 2014, by admitting the allegations and providing explanations.

The case was assigned to me November 12, 2014, to conduct the hearing requested by Applicant. The hearing was held as scheduled on December 11, 2014. The transcript of the hearing (Tr.) was received December 22, 2014.

The record was kept open for a brief period after the hearing to allow Applicant to provide a résumé or curriculum vitae, and he did so in a timely manner. It is admitted without objections as Applicant's Exhibit C.

Findings of Fact

1. Applicant's educational and employment history

Applicant is a 62-year-old employee who is seeking to retain a security clearance previously granted to him; he was first granted a security clearance in 1990; and his most recent security clearance was granted in 2004.⁴ An aerospace engineer by training and experience, he is employed by a federal contractor that provides space-launch services to the U.S. Government.

Applicant was born and raised in Egypt. He earned a bachelor's degree in aerospace engineering from an Egyptian university in 1975. He was then required to serve about 14 months of military service. He has no additional obligations or connections to the Egyptian military. He then spent a brief period working in Egypt for an industrial organization until he decided to further his education in France.

Applicant enrolled as a student at a French aerospace engineering school. He was awarded his initial degree in 1980 and then earned a doctorate degree in 1982. While as student, he was employed as a teaching assistant at the school and as a

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006).

⁴ Exhibit 1.

research assistant for a French governmental agency. He has no additional obligations or connections to either entity.

Having previously visited family in the United States, Applicant immigrated here to pursue a career in aerospace engineering. He has worked for U.S. aviation or aerospace companies since 1983.⁵ He has been employed by his current employer or its predecessor in interest since 1994. His employment history as reflected in his résumé includes publication of five professional articles and three U.S. patents.

2. Applicant's family ties to the United States and Egypt

Applicant became a naturalized U.S. citizen in 1987. His wife is also a naturalized citizen, and their three children are native-born U.S. citizens. Applicant met his wife through a mutual friend when she was visiting the United States. They married in the United States in 1986, and they have since continuously resided here. They have lived at the same residential address since 1994. Although his wife is also an Egyptian citizen, she was born in Kuwait and lived most of her early life in that country because that is where her father was employed teaching English. His wife is employed as a paraprofessional by a local school district.

Applicant's three children are all young adults. Because Applicant is an Egyptian citizen, by operation of Egyptian law, his three children are dual citizens of the United States and Egypt. The oldest child has recently opened up her own business, the second child is pursuing a joint degree in law and business (JD/MBA), and the youngest child is a college student.

Applicant's father, who was a professor of medicine, passed away when Applicant was a young child. After his father's death, Applicant's mother finished her education and obtained employment for a governmental agency concerned with planning. She worked there until she retired in 1990. Applicant has had regular contact with his mother via telephone conversations. Since she had a minor stroke within the last year, he now calls his 80-plus-year-old mother nearly every day to check on her well being.

Applicant now has more contact with his older brother than in the past because that brother is living with his mother in Egypt. His older brother retired in 2011 after working many years for a governmental agency concerned with promoting foreign trade. Applicant stated that his mother and brother live in a safe and upscale neighborhood of a major city in Egypt.⁶

Applicant's younger brother is a naturalized U.S. citizen and has been a practicing physician in the United States for many years. His younger brother has two

⁵ Exhibit C.

⁶ Tr. 77-79.

children, both native-born U.S. citizens; one child is a physician; and the other child works in public health.

In addition to his immediate family, Applicant has extended family in the United States consisting of aunts, uncles, nieces, and nephews.⁷ All the children are native-born U.S. citizens.

Applicant's wife comes from a large family with seven children. Applicant's father-in-law and mother-in-law are deceased. Applicant's six brothers-in-law are Egyptian citizens; three are living in Egypt; two are living in the United States as dual citizens; and one is believed to be deceased.⁸ Applicant has infrequent (annually to quarterly) contact with his brothers-in-law.

3. Applicant's financial interests in the United States and Egypt

Although the vast majority of his financial interests are in the United States, Applicant has some financial interests in Egypt. In 1975, he bought an apartment in a complex that was then under construction in Egypt.⁹ He addressed the apartment during his previous background investigation in 2003;¹⁰ he reported ownership of the apartment in his March 2013 security clearance application;¹¹ and he provided additional details during the security clearance process.¹²

Applicant estimates that he made a down payment of about U.S. \$3,000 and then paid an additional \$15,000 to \$20,000 for construction costs. As of 2003, the apartment complex was not fully completed.¹³ He bought the apartment before he went to France with the idea he would live there when he married.¹⁴ He has never lived in the apartment, and the apartment has never been leased to tenants as an income-producing property. His ballpark estimate is that the apartment has a value of about

⁷ Tr. 50–51.

⁸ Tr. 51; Exhibit 2.

⁹ Exhibit 3.

¹⁰ Exhibit 3.

¹¹ Exhibit 1.

¹² Exhibits 2.

¹³ Exhibit 3.

¹⁴ Tr. 58.

\$70,000,¹⁵ which he thinks is about a tenth of the value of his family home in the United States.¹⁶

Applicant opened a bank account in Egypt during his most recent trip there in 2013.¹⁷ He did so to receive a \$60 monthly payment from an Egyptian engineering professional association or group for which he qualified at age 60. He estimates the account has a balance of about \$1,000.¹⁸ He has never drawn on the account, but his daughter may have drawn on it during a trip to Egypt. The empty apartment, the bank account, and the \$60 monthly retirement stipend are the entirety of his financial interests in Egypt. All other financial interests, to including the family home and retirement accounts, are in the United States.

4. Applicant's record of voting in Egyptian elections

Applicant voted two or three times by mail-in ballot in Egyptian elections in 2011 and 2012.¹⁹ He disclosed those votes in his March 2013 security clearance application and provided additional details during the security clearance process.²⁰ Previously, he had not voted in Egyptian elections since before immigrating to the United States.²¹

Applicant has endeavored to explain why he voted in Egyptian elections when he completed the security clearance application, in response to interrogatories, in response to the SOR, and during the hearing. Uniformly or consistently, he has stated that he voted to promote Egypt's stability. For example, in his security clearance application, he briefly explained that he voted because Egypt's stability is important to the Middle East and North Africa.²²

In response to interrogatories in July 2014, Applicant explained he voted after the 2011 revolution in Egypt to promote the country's stability, which is important to the Middle East, North Africa, and the world, and he believed that voting was consistent with the interests of the United States. He further explained that he "may" vote in an Egyptian election in the future "if I think it is important enough and I can easily do it. At this time voting by mail is no longer allowed and I won't travel to [the location of an

¹⁵ Tr. 59–60; Exhibit 2.

¹⁶ Tr. 60; Exhibit B.

¹⁷ Tr. 86–89.

¹⁸ Exhibit 2.

¹⁹ Tr. 62–71, 80–85.

²⁰ Exhibits 1 and 2.

²¹ Tr. 62–63.

²² Exhibit 1.

Egyptian consulate in the United States] to cast a ballot. I did not vote for the constitution or the latest presidential election” in Egypt in May 2014.²³

In response to the SOR in August 2014, he stated that he voted in 2011 and 2012, which was a critical time in Egypt, in light of encouragement he believed the U.S. Government was providing to promote free and fair elections. He further stated that voting by mail is no longer allowed and he will not travel to vote. He also stated he was willing to promise to never vote in an Egyptian election if such a condition was acceptable regardless of the circumstances of an election in Egypt.

During the hearing, Applicant explained that the 2011 revolution was a significant event and was the circumstance that led him to vote.²⁴ He explained his reasoning as follows:

Egypt is, has a lot of influence in the area, and has a lot of influence in what’s happening in the whole world now. People that are claiming to be Islamists, that they know what is right and what is wrong, those guys have affected what’s happening in the world now to a great extent. So what happens in Egypt when there is such a big change, what happened after the revolution, is a U.S. concern. If affects you, it affects all of us. It affects the world.²⁵

He also explained that his vote when combined with the votes of other citizens living outside of Egypt had symbolic importance to those living in Egypt.²⁶ In other words, he believes it is important for those who live in a democracy to practice democracy by voting.

Applicant further explained that he believed that the U.S. Government encouraged Egyptian citizens to vote.²⁷ He presented documentary evidence suggesting that the United States has encouraged voting in Egypt.²⁸ In particular, he presented information from the U.S. Embassy in Egypt discussing U.S. support for Egypt’s democratic transition, including providing \$65 million to facilitate the transition, including U.S.-supported programs to raise “public awareness about the voting process

²³ Exhibit 2.

²⁴ Tr. 63.

²⁵ Tr. 63.

²⁶ Tr. 65–66.

²⁷ Tr. 80–81.

²⁸ Exhibit B at 4 (internal citations omitted).

and *encourage all Egyptians*, especially women and youth, to vote through education initiatives.”²⁹

While acknowledging that he had indicated that he may vote in the future if doing so was relatively easy, Applicant stated he does not believe that he will vote in an Egyptian election again.³⁰ He explained when he voted in 2011 and 2012, he did not appreciate that voting might raise an issue with his security clearance, and had he been aware of the concern, he may not have voted.³¹ He then stated that he did not plan to vote in Egyptian elections.³²

5. Background information on Egypt³³

Egypt is a major country in the Arab world. The United States has had diplomatic relations with Egypt since the country gained independence from protectorate status under the United Kingdom, and the two countries share a relationship based on mutual interest in Middle East peace and stability, revitalizing the Egyptian economy and strengthening trade relations, and promoting regional security. Egypt has been a key U.S. partner in ensuring regional stability and on a wide range of common security issues, including countering terrorism. A core objective of U.S. policy toward Egypt is supporting a successful transition, which was launched in 2011, to democracy and economic stability. Egypt is one of several countries, such as Australia, Israel, Japan, and New Zealand, that has been designated a major non-NATO ally for purposes of the Foreign Assistance Act of 1961 and the Arms Export Control Act.

The United States is facing complex questions about the future of U.S.-Egypt relations in light of the unrest and violence that occurred in Egypt in 2013 when the military ousted then President Morsi from office. In August 2013, the Egyptian government declared a state of emergency, which the Obama Administration denounced as well as strongly condemning the ongoing violence in Egypt. To that end, there has been a marked increase in terrorism and violent extremism following the removal of the president in 2013. Egypt’s human-rights record is also a concern due to, among other things, excessive use of force by security forces, suppression of civil liberties, and military trials of civilians.

²⁹ Exhibit B (Document entitled Supporting Egypt’s Democratic Transition from the U.S. Embassy) (emphasis added).

³⁰ Tr. 82–83.

³¹ Tr. 83.

³² Tr. 85.

³³ This information is gleaned from Department Counsel’s request for administrative, which was granted, and documentary matters presented by Applicant. See Exhibits 4 and B.

Egypt considers all children born to Egyptian fathers to be Egyptian citizens even if they were not issued an Egyptian birth certificate or passport. Persons with dual nationality who travel to Egypt on their Egyptian passports are normally treated as Egyptian citizens by the government.

6. Applicant's credibility during the hearing

Applicant was serious and respectful throughout the hearing, and he answered questions in an open and honest way without hesitation. I was favorably impressed by Applicant and had no concerns about his credibility. Likewise, concerning his voting in Egyptian elections, his explanations for doing so were not inconsistent or contrary. Instead, recognizing his academic training and years of experience as an aerospace engineer, I found his explanations overall consistent in light of his effort to explain himself with a high degree of precision on matters outside of his subject-matter expertise.

Law and Policies

It is well-established law that no one has a right to a security clearance.³⁴ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁵ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.³⁶ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁷

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³⁸ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

³⁴ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

³⁵ 484 U.S. at 531.

³⁶ Directive, ¶ 3.2.

³⁷ Directive, ¶ 3.2.

³⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³⁹ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.⁴⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁴¹

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴² The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴³

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁴⁴ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

1. The foreign influence concern

The gravamen of the SOR under Guideline B is whether Applicant's ties to Egypt disqualify him from eligibility for access to classified information. Under Guideline B for foreign influence,⁴⁵ the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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

⁴⁰ Directive, Enclosure 3, ¶ E3.1.15.

⁴¹ Directive, Enclosure 3, ¶ E3.1.15.

⁴² *Egan*, 484 U.S. at 531.

⁴³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁴⁴ Executive Order 10865, § 7.

⁴⁵ AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

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.⁴⁶

The guideline contains several disqualifying conditions. Given the evidence of Applicant's ties to Egypt, I have especially considered the following disqualifying conditions:

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;

AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

AG ¶ 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.

Based on the circumstances surrounding the 2011 revolution and the removal of the president in 2013, Egypt meets the heightened-risk standard in AG ¶¶ 7(a) and (e).

Applicant's family ties to Egypt are sufficient to raise a concern. Although most of his family is now living in the United States, Applicant's mother and brother are citizens of and residents in Egypt. Both are retired from careers working for the government. And Applicant has three brothers-in-law who are citizens of and residents in Egypt. His relationship with those men appears rather distant, but there is a presumption of some closeness or obligation via his wife's relationship with her brothers. In addition to the family ties, Applicant has financial interests in Egypt consisting of the empty apartment valued at about \$70,000, the bank account, and the \$60 monthly retirement stipend, the latter two being established in 2013. Taken together, his family ties and financial interests are sufficient to justify further review.

The guideline also contains several mitigating conditions. Given the evidence here, I have especially considered the following mitigating conditions:

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

⁴⁶ AG ¶ 6.

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 United States;

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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(f) 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.

Applicant is a successful aerospace engineer who has spent decades working in the U.S. aviation and aerospace industries. He has held a security clearance during most of those years. He has lived, worked, and raised a family in the United States for the last 30-plus years. His ties or connections to his immediate family members and in-laws in Egypt are about what you would expect given the time and distance between them. He's doing his best to be a good son to his mother, who has been a widow since his early childhood. He has an ongoing relationship with an older brother who lives with his mother. Otherwise, the bulk of his family ties, both immediate and extended, are to people here in the United States. Although his financial interests in Egypt are not *de minimis*, those interests are insignificant compared to his U.S. financial interests. By example, the value of his Egyptian apartment is estimated to be a tenth of the value of his family home, and this does not account for his other U.S. financial interests. And both the bank account and the \$60 monthly retirement stipend from the Egyptian engineering association are of a routine nature and are unlikely to be used effectively against Applicant in a foreign-influence context. Taken together, his family, employment, and financial ties to the United States are much stronger than his ties to Egypt.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has family ties to and financial interests in Egypt. Those circumstances should not be dismissed or overlooked as fanciful or unrealistic, especially considering the recent troubles in Egypt and the U.S. concerns about the risk those troubles present. With that said, Applicant's connections to Egypt are outweighed by his family, employment, and financial ties to the United States. On balance, I am satisfied that this is not a case of "divided loyalties," with an applicant who has one foot in each country, as contemplated by the guideline. Instead, I am satisfied that Applicant has had both feet firmly planted in the United States for many years and those ties are now quite strong. Any security risk or concern presented by his ties to Egypt is outweighed and overcome by his much stronger ties to the United States.

2. The foreign preference concern

The gravamen of the SOR under Guideline C is whether Applicant's voting in Egyptian elections in 2011 and 2012 disqualifies him from eligibility for access to classified information. Under Guideline C for foreign influence,⁴⁷ the suitability of an applicant may be questioned or put into doubt due to actions that indicate a foreign preference. The overall concern is:

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.⁴⁸

Given the undisputed evidence that Applicant voted two to three times in Egyptian elections in 2011 and 2012 and the circumstances surrounding his voting, the following disqualifying and mitigating conditions are most pertinent:

AG ¶ 10(a)(7) 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: voting in a foreign election; and

AG ¶ 11(f) the vote in a foreign election was encouraged by the United States Government.

Voting in a foreign election is an exercise of foreign citizenship and such action raises a genuine security concern. The DOD was justified in inquiring into Applicant's voting in 2011 and 2012 and setting forth its concern in the SOR. Having considered his explanations for voting, I am persuaded that his voting was largely influenced or motivated by a confluence of unusual if not historic events in his country of birth as opposed to a strong desire to exercise dual citizenship. Added to those events was the circumstance of the ease of voting by mail, an option that Applicant understands is no longer available.

Moreover, Applicant believed his voting was consistent with U.S. interests and he further believed voting was encouraged by the United States. Although Applicant's beliefs are subjective, in light of the information from the U.S. Embassy in Egypt, as noted in the findings of fact, a reasonable person could believe that voting was encouraged by the United States.

I also accept Applicant's explanation that he did not appreciate that voting might raise an issue with his security clearance, and had he been aware of the concern, he

⁴⁷ AG ¶¶ 9, 10, and 11 (setting forth the concern and the disqualifying and mitigating conditions).

⁴⁸ AG ¶ 9.

may not have voted. And I am persuaded that he has no intention of voting in Egyptian elections in the future. By example, as noted in the findings of fact, he did not vote in the most recent presidential election in May 2014, which was several months before the SOR was issued.

I also considered that Applicant voluntarily reported the information about his voting, and he was truthful, complete, and cooperative in responding to questions.⁴⁹ It is likely that the DOD would be unaware of Applicant's voting but for his candor in reporting the information in his application. By reporting the information, he did exactly what is expected of a person who is currently eligible for access to classified information.

Applicant met his burden to present sufficient evidence to explain and mitigate the foreign influence and foreign preference security concerns stemming from his ties or connections to Egypt. I have no doubts about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.⁵⁰ Accordingly, I conclude that he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a–1.f:	For Applicant
Paragraph 2, Guideline C:	For Applicant
Subparagraphs 2.a and 2.b:	For Applicant

⁴⁹ AG ¶ 2(e)(1) and (2).

⁵⁰ AG ¶ 2(a)(1)–(9).

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge