

DATE: October 3, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0758

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin H. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On April 24, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to

Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 3, 2001, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on August 10, 2001. A notice of hearing was issued on August 15, 2001. The hearing was held on September 13, 2001, at which the Government presented five exhibits. The Applicant presented six exhibits. The Applicant testified on his own behalf. The Applicant submitted one Post Hearing exhibit consisting of items 1 through 4. The official transcript (Tr.) was received on September 27, 2001.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." (Hereafter referred to as the oney memorandum).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the live testimony and the Government's documents. The Applicant is 40 years of age, and has a Bachelor's Degree in Computer and Engineering Science. He is employed as a Software Engineer for a defense contractor. He seeks a Secret-level security clearance in connection with his employment in the defense industry.

Guideline C - Foreign Preference

The Applicant was born and raised in Egypt. In 1986, at the age of 25, he first came to the United States as an employee of an Egyptian company, based in Egypt, that became involved in a project with a defense contractor in the United States. Between 1986 and 1990, the Applicant traveled between the United States and Egypt for the project, on a tourist visa. In 1990, he was hired by a United States company. In 1996, the Applicant renewed his Egyptian passport which now expires in January 2003. In July 1998, the Applicant became a naturalized citizen of the United States. (Government Exhibit 3.) At that time, he chose not to relinquish his Egyptian citizenship and passport. The Applicant is a dual citizen of Egypt and the United States. At the time of the hearing, he possessed a passport from both countries. (Government Exhibit 2).

On February 2, 2000, the Applicant was interviewed by a Special Agent of the Defense Security Service (DSS). During the interview, the Applicant explained that, since 1990, he has traveled to Egypt every year or two to visit his ailing mother. The Applicant met his wife in Egypt in 1991. She came to the United States in 1993. All of the Applicant's family, and his wife's family, reside in Egypt. He and his wife have traveled to Egypt in November 1993, summer 1995, January 1996, August 1998, August 1999, and December 2000. He states that he and his wife have maintained their Egyptian passports for the sole purpose of visiting their families in Egypt. He and his wife have continued to maintain an ongoing relationship with their relatives in Egypt. He and his wife telephone their families on a monthly basis. (Government Exhibit 2).

The Applicant states that he has no interest in any rights or privileges as a citizen of Egypt. He has never served in the military and is not obligated to do so. The Applicant has no bank accounts or property in Egypt. (Government Exhibit 2).

Realizing that his foreign passport may create a problem for him in obtaining a security clearance, the Applicant testified that following the interview with DSS, he began action to have his Egyptian passport canceled. He contacted the Egyptian consulate in San Francisco and was told that in order to cancel his passport he must travel to Egypt and seek the authority of the Egyptian President. (Tr.p.46-47 and 53-54). The Applicant then made several telephone calls to Egypt, and was told about a respectable lawyer who could go to the proper authorities to have the Applicant's passport canceled. The Applicant stated that he sent his passport to the lawyer with a letter stating his request, and the lawyer returned the passport to the Applicant with a "canceled" stamp on it dated March 5 that appears on page 4 and 5 of the current passport. (Applicant's Exhibit A and Tr. p. 46).

The Applicant submitted a Post-Hearing exhibit consisting of eight photographs that appear to be of the Applicant destroying his passport by cutting it into pieces. Also attached is a copy of an affidavit that he sent by express mail to the Egyptian Consulate requesting to renounce his Egyptian citizenship. He has also attached a copy of the return receipt indicating that the affidavit and the cut up passport were received by the Egyptian Consulate. (Applicant's Post-Hearing Exhibit).

The Applicant has recently applied to have his mother and sister immigrate to the United States from Egypt. His wife has applied to have her mother and father immigrate to the United States from Egypt. (Applicant's Exhibits B, C, D and E).

Guideline B - Foreign Influence

The Applicant's mother and sister, mother-in-law and father-in-law, brother and sister-in-law, aunts and uncles, cousins and other extended family are citizens of Egypt and all reside in Egypt. (Government Exhibit 2 and Tr. pp. 58-59). The Applicant visits his family when he travels to Egypt. There is no evidence that any of the of the Applicant's family members work for the Egyptian government.

The Applicant's wife was born in Egypt and became a naturalized citizen of the United States in 1999. The Applicant's son was born in the United States. The Applicant's wife is also a dual citizen. (Government Exhibit 2).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the

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

Foreign Preference

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.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

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

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

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

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

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

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

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

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the written record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant is a dual citizen of Egypt and the United States. Although he lives and works in the United States, he has maintained his Egyptian passport until recently for the convenience of traveling to Egypt to visit his family. He has substantial ties to Egypt, including his mother and sister, his mother-in-law and father-in-law, brother-in-law and sister-in-law, aunts, uncles, cousins and other extended family members, all Egyptian citizens, who reside there. The Applicant has no family in the United States besides his wife and minor son.

The Applicant has been notified of the Money Memorandum. (Government Exhibit 1). My interpretation of the Money memorandum is that, in all cases involving an Applicant who has possessed or used a foreign passport, Guideline C requires a denial of the security clearance request unless the Applicant offers credible evidence that he (1) has obtained official approval for its use from the appropriate United States Government agency, or (2) has surrendered the passport.

The Applicant has tried to surrender his passport to the proper authorities. The Applicant has done everything that he possibly could outside of traveling to Egypt. The Applicant sent his passport to a lawyer in Egypt to have it canceled, and ultimately mutilated his passport, and sent it to the Egyptian Consulate. For all practical purposes the Applicant's passport is considered surrendered.

In regard to his Egyptian citizenship, the Applicant shows a clear willingness to renounce his Egyptian citizenship. Since obtaining his United States citizenship in 1998, he has used his United States passport to travel to Egypt in 1999 and December 2000. He has sent an affidavit along with his passport to the Egyptian Consulate requesting to renounce his Egyptian citizenship. Through no fault of his own, the Egyptian government does not recognize this process of renunciation, however, and he remains a dual citizen of both Egypt and the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the Applicant has substantial foreign contacts, as well as emotional and family ties, in Egypt. All of his family and his wife's family reside in Egypt, and they are Egyptian citizens of long standing. With his family and his wife's family in Egypt, there remains the possibility of pressure being placed on them, and through them, on the Applicant. It is his burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his foreign influence. The Applicant has not met the mitigating conditions of Guideline B and of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

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

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b.: Against the Applicant 2.c.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge