

DATE: October 10, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-16419

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Rita C. O'Brien, Department Counsel

#### **FOR APPLICANT**

Mark A. Urciuolo

### **SYNOPSIS**

The Applicant possessed dual U.S. Egyptian citizenship until he renounced his foreign citizenship in June 2002. He was born in Egypt to Egyptian parents and came to the U.S. 15 years ago at age 10. The Applicant renewed his foreign passport after becoming a naturalized U.S. citizen in order to secure exemption from foreign military service. He has since surrendered his foreign passport and has formally renounced his foreign citizenship through the foreign embassy. His parents and sister are dual citizens living in the U.S. These immediate relatives are not agents of a foreign power or in a position to be exploited by a foreign power and his contact and correspondence with his other relatives who are foreign citizens are casual and infrequent. Clearance is granted.

### **STATEMENT OF THE CASE**

On December 26, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 15, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on May 7, 2002. A Notice of Hearing was issued on May 16, 2002, scheduling the hearing, which was held on June 6, 2002.

The Government's case consisted of three exhibits (Gov. Ex.). The Applicant relied on his own testimony. Following the hearing, two additional documents were received, provision having been made at the time of the hearing for their post hearing submission. On June 27, 2002, Department Counsel having no objection to their admission of the documents, the submissions were admitted as a single applicant's exhibit (App Ex). The transcript (tr.) of the hearing was received on June 14, 2002.

### **FINDINGS OF FACT**

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits the

allegations except for the allegation he showed his foreign passport when he traveled in 1998.

The Applicant is 25-years-old, has worked for a defense contractor since July 1999, and is seeking a security clearance. The Applicant was an Egyptian citizen having been born in Egypt in 1977 to Egyptian parents. In 1987, the Applicant--then age 10--came to the U.S. The Applicant's parent and sister, all Egyptian citizens, came to the U.S. and have lived in the U.S. for the past 14 years. In May 1997, the Applicant, his parents, and sister become naturalized U.S. citizens. The Applicant remembers taking the oath to become a U.S. citizen as a major milestone and a very good day. (tr. 68) His father had two goals after immigrating to the U.S.: to get U.S. citizenship for himself and his family and to have his children educated in the U.S. His father currently holds a secret security clearance. (tr. 25) His father served 20 years in the Egyptian army before retiring in 1985 or 1986 at the rank of brigadier general. (tr. 51) His sister--age 27--is a computer programmer and has never worked for a foreign government.

The Applicant's father has seven<sup>(2)</sup> siblings who are citizens of Egypt living there. His father also has two brothers who are dual Egyptian U.S. citizens residing in the U.S. with their spouses and children. The Applicant's mother has three siblings all born and living in Egypt. The Applicant has 34 cousins living in Egypt, and three cousins living in the U.S. who are U.S. citizens. Some of his uncles have served in the Egyptian military but none of his cousins have. (tr. 63-64) His contact with relatives in Egypt is minimal. He has contacted them only during his visits to Egypt. He has also talked a few times in the past few years to one or another of his relatives during a telephone call initiated by his parents when the Applicant was at his parents' home. (tr. 54) His conversations lasted four or five minutes. In the last two years he has initiated only one call to an individual in a foreign country. In February or March 2002, he called his aunt in Egypt. (tr. 61) He does not send or receive cards or letters from individuals in foreign countries. Every month or two he might send e-mail to friends in Egypt.

Since becoming a naturalized U.S. citizen, the Applicant has visited Egypt twice<sup>(3)</sup>: 1998 and 2001. In 1990, the Applicant had an Egyptian passport issued which was valid for seven years. This passport was sent to the Applicant in the U.S. when he was 16 years old. In 1994, the Applicant--age 17--went to Egypt for two months on vacation and to attend a relative's wedding. He entered the country using his Egyptian passport. In August 1998, the Applicant was issued a U.S. passport which expires in August 2008. In 1998, the Applicant--then age 21--accompanied his best friend during a three-week visit to Egypt.

When the Applicant visited Egypt in 1998, he entered the country using his U.S. passport but did not show his Egyptian passport on entry into the country. Upon entering the country, the Applicant because he was a dual Egyptian U.S. citizen, did not have to pay a visa fee. In January 1999, he renewed his expired Egyptian passport, valid for seven years, to January 2006. He renewed his Egyptian passport in order to complete the necessary paperwork to avoid military service in Egypt and to be allowed to leave the country.

Under Egyptian law, all males over the age of 18 that are non students are eligible for the draft. A male cannot leave the country without having a final exemption from the draft or having a temporary exemption and permission to travel abroad. Dual citizens are granted a total exemption from the draft. A temporary exemption can be granted to students and to any male who is an only son. The Applicant qualified for a temporary exemption under both provisions. A valid Egyptian passport is needed to obtain any exemption. (tr. 22)

Between mid-December 2001 and mid-January 2002, the Applicant visited Egypt. The Applicant's father feared it was dangerous to travel in Egypt using a U.S. passport following the events of September 11,<sup>th</sup> 2002. (tr. 24, 40) Based on his father's advice, the Applicant entered and exited the country using his Egyptian passport. Additionally, the Applicant felt, at the time, he might be unfairly detained upon reentering the U.S. if he had an Egyptian stamp on his U.S. passport. (tr. 24)

In October 2000, the Applicant stated he would renounce his Egyptian citizenship if required. He expressed willingness to bear arms against any enemy of the U.S. including Egypt. In May 2002, upon learning his foreign passport caused concern the Applicant contacted the Egyptian Embassy and was told the Embassy had been instructed not to receive any passport or issue any receipts for any passport. (tr. 24, 41) He was told in order to relinquish his citizenship he would need to provide a copy of his birth certificate, Egyptian Identification Card, his father's ID card, and other items. The Applicant did not pursue the relinquishment of his citizenship and passport at that time because he knew these documents were located in Egypt. The night prior to the hearing, the Applicant received the needed documents. (tr. 65) On June 17, 2002, the Applicant went to the Egyptian Embassy, completed the necessary paperwork to renounce his Egyptian citizenship, and surrendered his Egyptian passport and Identification Card (App Ex A). Should the Applicant ever apply for Egyptian passport, it would be denied. After completing the documentation, his application was forwarded for final action in Egypt with an anticipated eight to 10 week period required to complete the paperwork.

The Applicant owns no property in a foreign country, nor is there the possibility he will inherit foreign property. He does not have a foreign bank account. He has no retirement or other welfare benefits in a foreign country. He went to high school and university in the U.S. and has lived in the U.S. since age 10.

## POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

**Foreign Preference (Guideline C)** The Concern: 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. E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. The exercise of dual citizenship. E2.A3.1.2.1.
2. Possession and/or use of a foreign passport. E2.A3.1.2.2.

Conditions that could mitigate security concerns include:

4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

**Foreign Influence (Guideline B)** The Concern: 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 not citizens of the United States or 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. E2.A2.1.1.

Conditions that could **raise a security concern** and may be **disqualifying** include:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country; E2.A2.1.2.1.

Conditions that could **mitigate** security concerns:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. E2.A2.1.3.1.
3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.

## BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side

of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

### CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the U.S. Security concerns over the Applicant's possible foreign preference arise from his dual U.S. Egyptian citizenship. The Applicant is an Egyptian citizen by virtue of being born in Egypt to Egyptian parents. In 1998, he contacted Egyptian Government Officials while visiting in country, to obtain a certification of exemption from Egyptian military service. Disqualifying Condition (DC) 1-(4) applies.

After become a U.S. citizen, he presented both his U.S. and expired Egyptian passport when he visited Egypt in 1998, but entered the country on his U.S. passport for it was the only valid passport he possessed at the time. He renewed his expired passport while in Egypt. In 2001, for personal safety reasons during a three-week visit to Egypt he entered and exited Egypt using his Egyptian passport. Since becoming a U.S. citizen in May 1997, the only use of his Egyptian passport was to visit Egypt. In June 2002, he surrendered the foreign passport. Because he possessed and used a foreign passport, DC 2-(5) applies.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence issued guidance clarifying the application of the Foreign Preference adjudicative guideline. The ASDC3I memo states any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States government. The policy makes no exception for using a foreign passport due to personal safety concerns. When the Applicant became aware of the ASDC3I memo he could not immediately surrender his foreign passport to the foreign embassy because the Embassy was not accepting returned passports. Additionally, he was told in order to revoke his citizenship he needed certain documents which were located in Egypt. When he obtained the needed documents, he applied to renounce his foreign citizenship and surrendered his foreign passport. He has gone beyond the requirement of MC 4, (6) which only requires a willingness to do so. MC 4 applies. I find for the Applicant as to Foreign Preference (Guideline C) SOR subparagraphs 1.a., 1.b., and 1.c.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family members or a person to whom the individual has close ties of affection are citizens of and/or residing in a foreign country. A security risk may exist where the Applicant is bound by affection, influence, or obligation to individuals who are not citizens of the United States or may be subject to duress.

The Applicant's father, mother, and sister are dual Egyptian U.S. citizens living in the U.S. since 1987. Although his father retired from the Egyptian military, none of his immediate family currently work for a foreign government. His father holds a secret security clearance. His immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power. MC 1-(7) applies. I find for the Applicant as to SOR subparagraph 2.a.

The Applicant has numerous aunts, uncles, and cousins who are Egyptian citizens living in Egypt. His contact with these individuals is minimal. He has talked with some of them for four or five minutes on the telephone during the past few years. Only once in the last two years--in February or March 2002--did he initiate a call to an individual in a foreign country when he called his aunt. (tr. 61) He neither sends nor receives cards or letters from individuals in foreign countries, and infrequently sends e-mail to friends in Egypt.

The Applicant has had in person contact with his relatives when he visited Egypt. Since coming to the U.S. in 1987 at age 10, the Applicant has visited Egypt four times. In 1989, when 12 years old, in 1994 --at age 17--for a two-month vacation, in 1998 for three weeks, and for three weeks in late 2001 through early 2002. Although some of his uncles have served in the Egyptian military, none of his relatives now work for a foreign government. His contact with his foreign relatives is minimal. MC 3-(8) applies. I find for the Applicant as to SOR subparagraph 2.b.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or

absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. , Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C (Foreign Preference): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. One of the Applicant's aunts is deceased but he did not indicate if it was his father's sister or his mother's sister.
3. The Applicant has visited Egypt four times since coming to the U.S.: in 1989 at age 12, in 1994, 1998, and 2001. Only two of these visits occurred after he had become a U.S. citizen in May 1997.
4. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
5. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2
6. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
7. MC 1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. E2.A2.1.3.1.
8. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.