

DATE: February 12, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-22494

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has done everything possible to renounce his foreign citizenship, and surrender his foreign passport. His mother has passed away. There is also no evidence that any of the Applicant's siblings or half siblings are connected with any country's government, or are in a position to be exploited by any country. Clearance is granted.

**STATEMENT OF THE CASE**

On August 8, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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.

Applicant filed an Answer to the SOR on September 6, 2002.

The case was received by the undersigned on December 16, 2002. A notice of hearing was issued on December 16, 2002, and the case was heard on December 27, 2002. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on January 13, 2003. The issues raised here are whether the Applicant's alleged foreign preference and perceived foreign influence militate against the granting of a security clearance.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 55 years of age, has a Bachelors Degree in Engineering from an American university, and is employed by a contractor who seeks a security clearance on behalf of the Applicant.

Guideline C - Foreign Preference

1.a.~1.c. The Applicant became a naturalized U.S. citizen in June of 1985 (Government Exhibit (GX) 1 at page 1). Since becoming a U.S. citizen, he has traveled to the country of his birth, Egypt, on at least 20 occasions from August of 1993 to December of 1999 (Applicant's Exhibits (AppXs) A and B, and GXs 5 and 6). Each time the Applicant sought entry into Egypt, he tendered his U.S. passport to the immigration officer (Transcript (TR) at page 22 line 5 to page 26 line 23, AppXs A and B, and GXs 5 and 6). When asked if he were born in Egypt, he would also tender his Egyptian passport (*id*). Each time the Applicant entered and exited Egypt, his U.S. passport was stamped noting that entrance and exit, except for his sixth trip to Egypt in November of 1997, when the immigration officer mistakenly stamped his Egyptian passport instead of the tendered U.S. passport (*ibid*).

More than four months ago, in September of 2002, the Applicant surrendered his Egyptian passport to the Egyptian Consulate (TR at page 35 line 15 to page 36 at line 15, and AppX C). In a sworn statement executed by the Applicant in December of 2000, he expressed a willingness to renounce his Egyptian citizenship (GX 3 at pages 4 and 6). At his hearing, he reiterated this averment (TR at page 20 line 21 to page 7). He has, in fact, renounced his Egyptian citizenship (AppX D).

Guideline B - Foreign Influence

2.a. The Applicant's mother is deceased (TR at page 43 lines 21~24). One of his brothers is an American dual national, and is a pilot for an airline headquartered in Egypt (TR at page 53 line 20 to page 55 line 3). His other brother served in the Egyptian Navy more than 25 years ago, and is now retired from a civilian career in Egypt (TR at page 50 line 21 to page 51 line 14). His sister is a housewife who also resides in Egypt (TR at page 51 line 15 to page 53 line 10).

The Applicant also has three half siblings. One half brother, like his brother, served in the Egyptian Navy more than 25 years ago, and is also retired from a civilian career in Egypt (TR at page 49 line 8 to page 50 line 6). His other half brother is a civil engineer and lives in Saudi Arabia (TR at page 47 line 24 to page 49 line 7). Finally, his half sister is an American dual national and resides in the United States (TR at page 50 lines 7~20).

None of the Applicant's siblings or half siblings have any connection with any foreign government, nor are they in a position to be exploited by any foreign government.

Mitigation

The Applicant offers the statements of seven of his past and present coworkers (AppX E at pages 2~8). They all speak most highly of the Applicant (*id*).

**POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions 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 his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Foreign PreferenceConditions 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

Condition that could raise a security concern:

1. An immediate family member . . . is a citizen of . . . a foreign country;

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), . . . 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;

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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**

The Applicant has done everything possible to renounced his dual citizenship. Furthermore, four months prior to this renunciation, he surrendered his Egyptian passport to the Egyptian Consulate. Although he traveled to Egypt on at least 20 occasions during the last decade, he always tendered his U.S. passport the Egyptian immigration officers. He used

his Egyptian passport only to show that he was born in Egypt. I therefore conclude that the Applicant has not only met but has clearly surpassed the requirement of the last mitigating condition under Guideline C, which merely requires that he "express a willingness to renounce dual citizenship." He is not now a dual national, but only a U.S. citizen with a U.S. passport. Guideline C is therefore found in his favor.

Three of the Applicant's siblings and half siblings are citizens of and reside in Egypt. The other half brother resides in Saudi Arabia. They have no connection with any government, and there is no evidence that their presence in Egypt or Saudi Arabia can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign preference, and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

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

Richard A. Cefola

Administrative Judge