DATE: September 15, 2003

---

In Re:

---

SSN: ----------

Applicant for Security Clearance

---

ISCR Case No. 01-25513

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

## APPEARANCES

**FOR GOVERNMENT**

Catherine M. Engstrom, Esquire, Department Counsel

Juan J. Rivera, Esquire, Department Counsel

**FOR APPLICANT**

Daniel C. Schwartz, Esquire

## SYNOPSIS

Although Applicant surrendered her Egyptian passport in compliance with the Money Memorandum, her demonstrated foreign preference was not mitigated where Applicant had maintained her Egyptian passport since acquiring U.S. citizenship in 1986 and had used it to obtain hotel and airline discounts in Egypt and to ensure that she could enter Egypt without having to obtain a visa. In addition, she returned to Egypt for vacation and to visit relatives nearly every year from 1972 to 1987 and seventeen times in the sixteen years since she became a U.S. citizen. Finally, she was subject to potential foreign influence where her three siblings--two of whom are retired government employees--are citizens and residents of Egypt. Clearance denied.

## STATEMENT OF THE CASE

On 15 October 2002, 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)] that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 10 December 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge, but was reassigned to me on 12 February 2003, and received the same day. I issued a notice of hearing on 14 March 2003 for a hearing on 9 April 2003.

At the hearing, the Government presented two exhibits--admitted without objection--and no witnesses; Applicant presented six exhibits--five admitted without objection, one over objection--and the testimony of two witnesses, including herself. DOHA received the transcript on 17 April 2003.

## RULINGS ON PROCEDURE

At the hearing, Department Counsel requested that I take official notice of the State Department web page Country Reports on Human Rights Practices-2002 pertaining to Egypt and the State Department list of terrorist organizations. Applicant's counsel requested I take official notice of related State Department web sites pertaining to Egypt. I granted both requests.

**FINDINGS OF FACT**

Applicant admitted the foreign preference and foreign influence allegations of the SOR; accordingly I incorporate those admissions as findings of fact. She denied falsifying her clearance application.

Applicant--a 58-year-old employee of a defense contractor--seeks to retain the access she has had with this employer since 1990.

Applicant was born in Egypt in 1944. She grew up and was educated there, obtaining a bachelor's degree in electrical engineering from a state university in 1966. She began pursuing her master's degree in electrical engineering at that same university in 1966 and was employed as a teaching assistant. She married an Egyptian citizen in 1967 and had a son in 1970. She obtained her master's degree in 1972.

In 1972--when Applicant was 27--she obtained a full scholarship to pursue her doctorate in electrical engineering at a major state university in the U.S., and came to the U.S. on a student visa along with her husband and son. She obtained her doctorate in 1976. She also had a second son in 1976.

In 1978, Applicant became a legal permanent resident of the U.S. having decided that she wanted to become a citizen. She had a third son in 1981. She became a U.S. citizen in September 1986.[(2)] She obtained her first U.S. passport in January 1987, and renewed it in December 1996.

Until November 2002, Applicant possessed an Egyptian passport, issued in December 1994, that would not have expired until December 2004. She had maintained her Egyptian passport since coming to the U.S. in 1972. Between 1972 and approximately 1987 (the first 15 years she was in the U.S.), she returned to Egypt every 12-18 months (Tr. 71) using her Egyptian passport--the only one she was entitled to have. She first used her U.S. passport to return to Egypt in July 1987 (A.E. E). Since that time, her U.S. passports (A.E. D, E.), her 1990 clearance application (part of her answer), her sworn statement (G.E. 2), and her Answer document that she has returned to Egypt 17 times for periods varying between 3-5 weeks:[(3)] July 1987, July 1988, July 1989, December 1990, June 1992, August 1993, December 1994, July 1995, December 1996, August 1997, November 1998, July 1999, December 2000, June 2001, June 2002, and December 2002. Although she always traveled to Egypt **on** her U.S. passport, she always (except in December 2002) traveled **with** her Egyptian passport. She did so to ensure that she could enter Egypt without a visa if immigration officials required one for her to use her U.S. passport,[(4)] as a means of identification while in Egypt, and as a means of qualifying for hotel discounts and air travel discounts[(5)] that are not available to non-Egyptians. She travels to Egypt primarily for vacation. However, she also visits her brother and two sisters who live in Egypt. She also visited her mother until her death in 1995.

Applicant surrendered her Egyptian passport to the Egyptian Embassy after she received the SOR and became aware of the security significance of her retention of the passport.[(6)] She has expressed a willingness to renounce her Egyptian citizenship, but has not proceeded beyond inquiring how to do it.

Applicant has three siblings, a brother and two sisters, who are Egyptian citizens, residing in Egypt. The two sisters are retired government workers. One worked as a professor at a state university. The other worked in state television. The brother sells insurance. When Applicant is in Egypt, she typically visits her siblings about once a week, but does not stay with them. She calls them every month or so. She describes these contacts as "casual."

In 2000, Applicant and her siblings inherited about 10 acres of agricultural land from their mother's estate. The land generates about $200.00 for Applicant annually, an amount she has her brother (who manages the property) donate to charity. With fluctuations in the Egyptian economy, Applicant has estimated the value of her share of the property at between $12,000.00 and $20,000.00. Neither figure is significant as a percentage (.8%/1.3%) of her real estate holdings

and retirement accounts in the U.S. ($1,570,000.00), which do not include the value of her husband's retirement accounts or their other cash accounts.

On 11 November 1999, Applicant falsified a Security Clearance Application[(7)] (SCA)(SF 86)(G.E. 1) when she disclosed her travel to Egypt in November 1998 and August 1999, but omitted her travel to Egypt in August 1993, December 1994, July 1995, December 1996, and August 1997.[(8)] Applicant variously claims that she found the computer-based clearance application confusing and that she read the question to call for disclosure of trips within the last two years, not seven.[(9)] However, she did not falsify her clearance application by failing to disclose her property ownership, because, while her mother died in 1995, the estate had not completed probate and ownership of the 10 acres had not yet vested in Applicant and her siblings.

Egypt has a questionable human rights record, in the view of the State Department, because of its actions against terrorist groups. However, the Government submitted no evidence to show that Applicant's siblings are directly or indirectly affected by this fact.

Applicant is an exemplary employee of her company. Her friends, supervisor, and coworkers consider her a loyal American. She has had no security violations in the period of time she has held a clearance. She and her family have embraced the American dream of property and participation. She votes in U.S. elections. Other than I have described above, she has not exercised any right of her Egyptian citizenship.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. An administrative judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc*.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

## FOREIGN PREFERENCE (GUIDELINE C)

E2.A3.1.1 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.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.2. Possession and/or use of a foreign passport;

E2.A3.1.2.4. Accepting educational. . . benefits. . . from a foreign country;

E2.A.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.2. Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship;

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

## FOREIGN INFLUENCE (CRITERION B)

E2.A2.1.1. 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 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.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, $C^3I$) issued a memorandum to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, $C^3I$ memorandum **"requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."**(Emphasis added).[(10)]

## PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . .;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

## Burden of Proof

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation, or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

## CONCLUSIONS

Applicant has been a dual citizen of Egypt and the United States since her naturalization in 1986. Ordinarily, an applicant's foreign citizenship possesses little security significance if based solely on her birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C.

Although Applicant claims to prefer her U.S. citizenship to her foreign citizenship, her conduct belies that assertion. Applicant is clearly proud of her U.S. citizenship, but she has maintained significant aspects of her foreign citizenship. While her oath of allegiance to the U.S. and her rejection of allegiance to any foreign government in the citizenship oath is powerful evidence of a preference for U.S. citizenship, the citizenship oath does not automatically operate to terminate her citizenship rights in Egypt. The fact that Egypt may still consider her a citizen would ordinarily not affect the analysis of Applicant's preference. However, in this case Applicant reasserted her foreign citizenship and her preference for that citizenship by maintaining possession of, and renewing, her Egyptian passport, and using it both to obtain discounts not available to non-Egyptians, but to ensure that she would be treated as an Egyptian citizen if the need arose while in Egypt--a sort of insurance. The fact that she always used her U.S. passport to travel overseas does not mitigate the security significance of the fact that she traveled to Egypt with her Egyptian passport as backup.

A citizen of any country, including the U.S., who travels to another country, submits to the sovereignty of that country, including application of its laws regarding visits by foreign citizens. However, a citizen of the U.S. who travels abroad only as a U.S. citizen, travels with the knowledge that the U.S. Government is available to provide diplomatic assistance if the traveler encounters difficulty. A dual citizen of the U.S. and a foreign state who travels to that foreign state faces potential difficulty in obtaining U.S. diplomatic assistance because the foreign state may insist on treating the traveler as its own citizen, even where the entry document used is the U.S. passport.

Regarding possession and use of her foreign passport, Applicant meets none of the mitigating conditions (MC) for foreign preference.[(11)] Her dual citizenship is not based merely on her birth in a foreign country, but on her active assertion of her citizenship rights in that country. Applicant's voluntary assertion of her foreign citizenship rights occurred after she became a naturalized U.S. citizen. Although her conduct is lawful, there is no evidence that the conduct was formally sanctioned by the United States. Applicant has expressed a willingness to renounce her foreign citizenship, but has taken no steps to pursue that option, and had no interest in doing so until her clearance became an issue.

The ASD, $C^3I$ Memorandum provides only partial relief for Applicant. The Memorandum states that Applicant's past possession and use of her foreign passport can be mitigated only if Applicant surrenders the foreign passport or obtains U.S. Government approval for its use. Applicant has surrendered her Egyptian passport. Her doing so confirms my conclusion that Applicant is a law abiding citizen, but does not end the inquiry into the security significance of her conduct. Put another way, compliance with Money Memorandum is a necessary, but not necessarily sufficient, condition for mitigating her possession and use of her foreign passport. Further, the presence or absence of any one disqualifying or mitigating factor is not determinative of a case. I must still consider the circumstances of Applicant's conduct and determine whether that conduct demonstrates unacceptable foreign preference notwithstanding the surrender of the foreign passport.

In this case, Applicant appears to have begun expressing some preference for her Egyptian citizenship shortly after her U.S. naturalization, when she returned to Egypt for the first of 17 trips since becoming a U.S. citizen. She took her Egyptian passport, for the reasons described above, and renewed it in 1994 so she could continue to use it for those purposes. Presumably, she would have continued to renew if for those purposes but for the Money Memorandum. That Applicant engaged in this conduct, all otherwise lawful, in ignorance of the security implications of the conduct is beside the point. Although the Money emorandum postdates some of Applicant's conduct, the adjudicative guidelines for foreign preference have remained essentially unchanged since before Applicant became a U.S. citizen. Yet even the constancy of the guidelines is somewhat beside the point. To a certain extent, foreign preference is best measured by observing an Applicant's legal conduct without regard to administrative regulations or other limitations. This is because

foreign preference is to be expected in a nation of immigrants. It is natural to have a certain affection for the land of one's birth and for one's adopted homeland. It is even to be expected that one will return to the land of one's birth to visit relatives, to show the old country to your children, even to vacation occasionally. But Applicant's has returned to Egypt nearly annually since first coming to the U.S. in 1972--seventeen times since becoming a U.S. citizen. I do not doubt Applicant's loyalty and devotion to the U.S., but I cannot ignore that Applicant has maintained close and continuing contact with her native land. She goes "home" on vacation and visits family. This conduct, aided by her maintenance of her Egyptian passport, demonstrates an unacceptable division in her national preference. I resolve Guideline C against Applicant.

In a similar fashion, Applicant appears vulnerable to foreign influence. Applicant's property interest is insignificant in comparison to her U.S. assets, and provides no point of leverage. Nor is Applicant vulnerable because of the human rights situation in Egypt regarding pursuit of known terrorist groups. None of Applicant's siblings appear to have been employed in any position that would increase Applicant's potential vulnerability. Nevertheless, Applicant's contacts with her siblings are best described as close and continuing. Notwithstanding Applicant's representations that none of her family are agents of a foreign government, the record contains insufficient information about her family members to conclude that they do not constitute an unacceptable security risk as required by MC 1, particularly where I have concluded that Applicant has a preference for Egypt in the first place. I resolve Guideline B against Applicant.

The Government has established its case under Guideline E regarding Applicant's omission of five trips to Egypt from her clearance application. However, I conclude that Applicant could not have reported her property interest not yet vested. Nor would that expectancy create a financial interest required to be reported. But Applicant knew she had several more trips to Egypt than she reported. While Applicant later disclosed those trips to the Government, her conduct suggests she is willing to put her personal needs ahead of legitimate Government interests. I resolve Guideline E against Applicant.

## FORMAL FINDINGS

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 2. Criterion B: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: Against the Applicant

## DECISION

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

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).

2. Applicant's husband became a U.S. citizen in 1995; her first son became a U.S. in approximately 1988, when he turned 18. Both are dual citizens. Her other two sons are U.S. citizens by birth; they may be, or eligible to become, Egyptian citizens by derivation. However, neither has pursued Egyptian citizenship.

3. Not including some multiple entries when she traveled outside Egypt and returned after short visits to other countries.

4. Which they apparently did not.

5. On the state-owned domestic airlines.

6. In compliance with the Money Memorandum, discussed below.

7. Mis-alleged in the SOR as a "Questionnaire for National Security Positions," an earlier version of SF 86.

8. The SOR incorrectly alleged failure to report travel in June 1992, a period outside the reporting requirement (7 years) of question 16. The SOR also incorrectly alleged the December 1996 travel as occurring in August 1996, and did not include the August 1993 travel in the list of omitted travel.

9. I have considered these claims, as well as the fact that she did disclose the two most recent trips to Egypt and disclosed all her foreign travel in her 1990 clearance application (on a form that required disclosure of all travel, regardless of date). I conclude they are not credible for a number of reasons. Applicant is an electrical engineer, a discipline requiring precision. She is employed as a network and communications engineer. Applicant's security applications reflect that precision. Indeed, she did not disclose her pending inheritance because it was not yet vested--a precise and correct interpretation. I do not believe she had trouble with a computer-based application or read the question to require disclosure of only the last two years. The foreign contacts questions, as many of the other questions on the application, require disclosure of information for the last seven years. Some questions require disclosure of 10 years' information. Some require disclosure of any incident--as did Applicant's 1990 application regarding foreign travel. None of the questions has a two-year limitation.

10. During the proceeding this document was sometimes referred to as the Money Memorandum because it is signed by Assistant Secretary Arthur L. Money.

11. Of course, any conduct Applicant engaged in as an Egyptian citizen before becoming a U.S. citizen--such as obtaining her education there before coming to the U.S.--may be considered mitigated as occurring before her naturalization.