

DATE: December 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31057

ECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has surrendered his Egyptian passport to the Egyptian authorities. His foreign relatives are not in a position to be exploited by a foreign government and his foreign financial interests are not sufficient to affect his security responsibilities. The Applicant's incorrect answer on a questionnaire was not made with the intent of deceiving the Government. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On November 17, 2003, 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 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 December 7, 2003, and requested a hearing. The case was received by the undersigned on July 22, 2004, and a Notice of Hearing was issued on August 3, 2004.

A hearing was held on August 18, 2004, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who also submitted seven post-hearing exhibits. The transcript was received on September 7, 2004.

FINDINGS OF FACT

The Applicant is 59, married and has a Ph.D. He is employed by a defense contractor as a Senior Engineer/Scientist, and he seeks to retain a Top Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in activities which indicate a preference for another country over the United States.

The Applicant was born and raised in Egypt. He came to the United States in 1972 to obtain his post-graduate education. The Applicant became an American citizen in 1980. His wife became an American citizen in 1984. The Applicant has an American passport that was issued to him in 1995 and is due to expire in 2005. He has used that passport to travel to Egypt in 2000 and 2003 (Applicant's Exhibit C). The Applicant only considers himself an American citizen and while he feels affection for Egypt, the United States is his country of citizenship and his loyalty is only to this country. (Transcript at 64-65.)

When he first came to the United States, the Applicant used his Egyptian passport. He continued to renew that passport over the following years, the last time in 1998. The Applicant's Egyptian passport is due to expire in 2005 (Applicant's Exhibit E).

During the hearing, the Applicant argued that he needed to retain his Egyptian passport as a means of identification when he traveled to Egypt. He asked for, and was granted, additional time to obtain approval for him to retain his passport, as provided for in the Money Memorandum (Government Exhibit 3). His employer attempted to obtain such approval for the Applicant (Applicant's Exhibit G). Those efforts were evidently unsuccessful, as the Applicant surrendered his Egyptian passport to the Egyptian consulate on October 8, 2004 (Applicant's Exhibit E).

Subparagraph 1.d., concerning the Applicant's foreign financial interests, will be further discussed under Paragraph 2, below.

Paragraph 2 (Guideline B - Foreign influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has relatives and/or financial interests in a foreign country, thereby making him potentially vulnerable to coercion, exploitation or pressure.

The Applicant's parents are dead. He has one surviving sister who is a citizen and lives in Egypt. She has no connection to the Egyptian government. The Applicant's wife has three sisters who live in Egypt and are Egyptian citizens. They also have no current connection to the Egyptian government. All of the Applicant's relatives are independently wealthy and the Applicant sends no money to relatives overseas. The Applicant and his wife have occasional telephone contact with these relatives.

The Applicant has had rare contact with professional colleagues who still live in Egypt. This contact consists of visiting them when he is in Egypt and occasional emails. These people are not close friends of the Applicant.

When his mother died in 1991, the Applicant inherited a half interest in an eight unit apartment complex. Since that time he has worked with his sister to sell the four apartments which constitute his interest. (Transcript at 33-36.) After some initial problems, two of the apartments have been sold and the money (approximately \$30,000) deposited in the Applicant's bank account in Egypt (Applicant's Exhibits A and B). At the hearing, the Applicant estimated the total value of the four apartments as \$75,000. (Transcript at 38.) It is his intention to transfer all the money from the sale of the apartments to the United States once the transactions are completed.

The Applicant has been very successful in the United States. He estimates his net worth here at \$1.5 million. (Transcript at 106-107.)

Paragraph 3 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On January 5, 2001, the Applicant completed an official DoD questionnaire in which he stated that he did not have "any foreign property, business connections or financial interests." (Government Exhibit 1, question 12.) This statement was a false answer to a material question concerning the Applicant's activities overseas.

The Applicant was subsequently interviewed by a Special Agent of the Defense Security Service (DSS) on June 17, 2002. In that interview the Applicant discussed in detail the facts concerning his half interest in the eight unit apartment building in Egypt discussed above. (Government Exhibit 2 at 3.)

The Applicant called his sister in Egypt in 2001 when he was filling out the questionnaire (Government Exhibit 1) to ask her about the status of the sale of the property. She told him that the sale of the entire property was "done." He accordingly stated, "No," he did not own foreign property. The sale did not go through as expected, and in 2003 the Applicant explained the situation to the DSS agent. The Applicant and his sister subsequently decided to sell individual units of the apartment. Two of the four have been sold. (Transcript at 26-37, 69-76.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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:

Guideline C (Foreign preference)

Condition that could raise a security concern:

(2) Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

(None of the stated conditions have application in this case.)

Guideline B (Foreign influence)

Condition that could raise a security concern:

(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;

Conditions that could mitigate security concerns include:

(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;

(3) Contact and correspondence with foreign citizens are casual and infrequent;

(5) Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Guideline E (Personal conduct)

Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

Condition that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of falsification, have foreign connections or indicate a foreign preference that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of

persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has possessed and used an Egyptian passport after becoming an American citizen (Guideline C); that he has relatives and financial interests in Egypt (Guideline B); and that he incorrectly answered a question on a Government questionnaire concerning his financial interests in Egypt (Guideline E).

The Applicant, on the other hand, has successfully mitigated the Government's case. Turning first to Guideline C, the Applicant does not exercise dual citizenship with Egypt. Based on the evidence, the Applicant does not consider himself a citizen of Egypt in any way. He retained his Egyptian passport to use as a means of identification in Egypt, and not as a way to travel there. The Applicant presented a copy of his United States passport which confirms this point. After unsuccessfully attempting to receive permission to retain the Egyptian passport in accordance with the Money Memorandum, the Applicant made the decision to return the passport to the representatives of the Egyptian government and has done so. Paragraph 1 is found for the Applicant.

The Applicant has been a resident of the United States for over thirty years. During that time he has returned to visit Egypt three times, the last in 2003. His relationship with his sister is not particularly close, being based more on the attempts to sell the property he owns in Egypt. Under the particular circumstances of this case, the contacts between the Applicant and his wife and their relatives and friends in Egypt are not of a closeness to affect his security worthiness.

The property the Applicant owns in Egypt is worth approximately \$60,000. This is approximately five percent of the total value of his estate in the United States. Such a value is minimal and is not sufficient to affect his security responsibilities. Guideline B is found for the Applicant.

With regards to Guideline E, I find that the Applicant made an error of judgment as opposed to an attempt to deceive the Government. When he filled out the questionnaire, the Applicant believed the property was about to be sold in the near future and he would no longer have any financial interests overseas. He therefore answered the question with what he believed the truth was going to be as opposed to what it was at the time. Once the sale fell through, the Applicant told the DSS agent all about his financial situation the first opportunity he had. Based on the evidence presented to me, I find that the Applicant did not intend to deceive the Government when he gave the incorrect answer. Guideline E is found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the Government's Statement of Reasons.

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.

Subparagraphs 1.a. through 1.d.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.f.: For the Applicant.

Paragraph 3: For the Applicant.

Subparagraph 3.a.: 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.

Wilford H. Ross

Administrative Judge