

DATE: March 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-31322

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who is a U.S. naturalized citizen for almost 30 years (since 1976) and was a citizen of Egypt solely by virtue of his birth and his parents' birth in the country, mitigates security concerns associated with his past dual citizenship with Egypt and the U.S. by surrendering his expired Egyptian passport and renouncing his Egyptian citizenship. Because Applicant's immediate and extended family members who reside in Egypt are shown to pose no discernible vulnerability to pressure or coercion, foreign influence concerns are also mitigated. Applicant successfully refutes allegations of falsification of his security clearance. Clearance is granted.

STATEMENT OF CASE

On March 10, 2004, 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 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on March 23, 2004, and requested a hearing. The case was assigned to me on October 8, 2004, and was scheduled for hearing on December 7, 2004. A hearing was convened on December 7, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on two witnesses (including himself) and nine exhibits. The transcript (R.T.) of the proceedings was received on December 17, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Department Counsel requested official notice be taken of a U.S. State Department

consular information sheet and background reports covering Egypt. There being no objection from Applicant, and good cause being shown, official notice was taken of the State Department documents.

Prior to the close of the hearing, Applicant requested the record remain open to permit him the opportunity to supplement the record with documentation of his surrender of his Egyptian passport and renunciation of his Egyptian citizenship. There being no objection from the Government, and good cause being demonstrated, Applicant was granted eight days to supplement the record. The Government, in turn, was afforded two days to respond. Within the time permitted, Applicant furnished a copy of a letter stating he no longer needed a security clearance and ensuing documentation of his surrender of his Egyptian passport and renunciation of his Egyptian citizenship. Applicant's submissions were accepted as Applicant's exhibits D and E, respectively.

SUMMARY OF PLEADINGS

Under Guideline C, Applicant is alleged to (1) have dual citizenship with Egypt, (2) have applied for an Egyptian passport in January 2002, even though he was naturalized as a U.S. citizen in May 1976 and (3) have possessed an Egyptian passport when interviewed by a DSS agent in August 2002.

Under Guideline B, Applicant is alleged to (a) have three brothers, a step-brother and four sisters who are citizens and residents of Egypt and to (b) have traveled to Egypt in at least May 2002, December 2001, February 1997, and May 1996, respectively.

Under Guideline E; Applicant is alleged to have falsified his security clearance application (SF-86) of June 2002 by omitting (i) his trips to Egypt in 2002, 1997 and 1996 within the past seven years and (ii) his other family members who are citizens and residents of Egypt.

For his response to the SOR, Applicant admitted all of the allegations under Guidelines B and C. He claimed his undivided loyalty to the U.S. and his Egyptian citizenship is based solely on his parent's citizenship and his place of birth. He claimed he told the interviewing DSS agent he was willing to surrender his Egyptian passport. Applicant denied deliberately falsifying his SF-86, claiming he misunderstood the question and provided all of the details about his trips to Egypt and his relatives residing in Egypt voluntarily when asked about them by the interviewing DSS special agent. Applicant claimed he is married to a U.S. citizen for more than 29 years, has two children by her and is proud to be an American.

FINDINGS OF FACT

Applicant is a 60-year old highly regarded project manager (*see ex. B*) of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was born in Egypt and immigrated to the U.S. where he became a naturalized citizen in 1976. After being told by Egyptian authorities in 1986 he needed an Egyptian passport to exit Egypt, he accepted the advice and renewed his expired Egyptian passport (R.T., 55). Applicant traveled to Egypt on four occasions within the past seven years: in May 2002, in December 2001, in February 1997, and in May 1996 to visit his family, all on the strength of his U.S. passport (holding his Egyptian passport in reserve just in case he encountered an exit problem). Since becoming a U.S. citizen, he traveled to Egypt on other occasions as well, once showing his Egyptian passport when an Egyptian official questioned his use of his U.S. passport. Without Applicant's Egyptian passport in evidence (it is not), it is impossible to determine whether or not the passport was ever stamped indicating its use after his becoming a U.S. citizen.

In an interview with DSS agent A in August 2002, Applicant told the agent he would be willing to surrender his Egyptian passport (*see ex. 2*). Applicant has since surrendered his Egyptian passport and renounced his Egyptian citizenship as he indicated he was willing to do at the hearing (*see ex. E; R.T., at 56*). Should he travel to Egypt again, he will rely solely on his U.S. passport, which U.S. State Department consular sheets report is accepted by Egyptian authorities screening dual nationals exiting Egypt (*see U.S. Consular Information Sheet of September 2004*).

Applicant's spouse of 29 years is a U.S. citizen by birth; they have two children born to them. Applicant has three

brothers, a step-brother and four sisters who are citizens and residents of Egypt. None of his siblings work or have worked for the Egyptian Government. While he has traveled to Egypt on four occasions since 1996 to visit his family, he maintains only casual contact with his siblings and step-brother. He speaks to them every few months.

Egypt is characterized by U.S. State Department consular and information sheets as an independent republic founded in 1922. It is the most populous country in the Arab world and a strategic partner of the U.S. on a broad range of counter-terrorism and law-enforcement issues. Egypt has long provided military assistance and training to a number of African and Arab states in the region and has significant antiterrorism legislation in place to fight terrorism in the country and throughout the region. As the country slowly transforms from a government-controlled economy to a free market system, both its currency and economy in general remain vulnerable to external shocks. What is more, Egypt's human rights record remains poor and has been marked by the absence of any meaningful opportunities to challenge authority and the more limited availability of due process and appellate access in its courts in the wake of the State's passage of its Emergency Law. Many of the reported disappearances and torture incidents by human rights organizations remain unsolved.

Asked to complete an SF-86 in June 2002, Applicant responded to question 9 by listing only his deceased mother and brother residing in the U.S., omitting his three brothers, step-brother and four sisters who reside in Egypt (*see ex. 1*). Denying he deliberately omitted his siblings residing in Egypt, he assures he relied on the instructions in the electronic SF-86 worksheet he filled out before completing his SF-86. In the worksheet, proof of U.S. citizenship is made a requirement for relatives born outside of the U.S. (*see pg. 19 of ex. A*). Based on his reading of the worksheet instructions on reporting relatives, he mistakenly believed question 9 of his SF-86 was only inquiring about relatives living in the U.S. Applicant's explanations of confusion about the scope of question 9 are accepted (R.T., at 59-66).

Besides omitting his siblings residing in Egypt, Applicant failed to report all of his trips to Egypt in the space provided in question 16 of his SF-86 (*ex. 1*). Applicant attributes his omissions to finding too little space to list his other travel and his failure to take note of the space later provided in the questionnaire for additional information (R.T., at 66). The Government does not dispute Applicant's claims his omissions (both of his family members residing in Egypt and his trips to Egypt) were unintentional.

In his interview with DSS Agent A in August 2002 (two months after completing his SF-86), Applicant voluntarily provided the names and addresses of his relatives living in Egypt, as well as the dates of his travel to Egypt between 1996 and 2002, without any prompting or confronting (*see ex. 2; R.T., at 66-70*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

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.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other

persons to whom he or she may be bound by affection, influence, or are 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.

Personal Conduct

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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a highly regarded project manager of a defense contractor who after being born and raised in Egypt emigrated to the U.S. and became a naturalized U.S. citizen in 1976. Once in the US, he married a U.S. citizen by birth who bore him two children. Applicant has brothers and sisters and a step brother who are citizens and residents of Egypt, with whom he communicates with every few months. Relying on the advice of an Egyptian official who assured him he needed an Egyptian passport to exit the country as a dual national of Egypt, he renewed his Egyptian passport in 1986. Applicant has since surrendered his Egyptian passport and renounced his Egyptian citizenship.

Dual citizenship concerns necessarily entail country allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. In a different vein, the continued residence of Applicant's siblings and step-brother in Egypt raises potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S. and the potential for members of Applicant's immediate and extended family (*viz.*, his step-brother) being placed at risk to pressure, duress, or influence.

Foreign Preference

By virtue of his birth in Egypt to parents of Egyptian descent and citizenship, Applicant was endowed with Egyptian

citizenship through his parents. Based on a review of the State Department's Consular Information sheets and background reports, conclusions warrant that use of an Egyptian passport is not required of dual nationals seeking to exit Egypt. Applicant did not know this at the time he relied on the advice of the Egyptian official that he needed an Egyptian passport to get out of Egypt as a dual national. By taking express action to renounce his Egyptian citizenship, Applicant absolved himself of any continuing concerns associated with his possessing a foreign passport.

While Applicant has never used his Egyptian passport after becoming a naturalized US citizen, he retained it in his possession until recently. Such continued possession, even without use and/or expiration (as here), has been considered by the Appeal Board to violate the *per se* bar of DoD's August 2000 memorandum concerning foreign passports (*hereinafter* "ASDC3I memorandum). See ISCR Case No. 03-06174 (February 28, 2005); ISCR Case No. 01-01295 (December 13, 2001). Risks of his being taken hostage behind Egyptian lines and denied the customary diplomatic intercession made available to U.S. citizens traveling on US passports is the generally accorded rationale for insisting on the traveler's use of a US passport when traveling abroad.

So, while Applicant's limited exercise of dual citizenship by obtaining and holding on to his Egyptian passport is sufficient to invoke Disqualifying Condition (DC) E2.A3.1.2 (*Possession and/or use of a foreign passport*) of the Adjudicative Guidelines for foreign preference, his very limited showing of his Egyptian passport prior to 1986 to exit Egypt and advantages that might be imputed to him in having the passport with him when he traveled to Egypt on his U.S. passport reflects a very minimal active exercise of dual citizenship that is distinguishable from situations where an applicant applies for and obtains a foreign passport, which he then uses in his foreign travels. Compare, e.g., ISCR Case No. 03-16516 (November 26, 2004) with ISCR Case No. 01-11192 (August 26, 2002). By demonstrating a very limited showing and renewing of a foreign passport and ensuing surrender of his Egyptian passport and renouncing of his Egyptian citizenship, Applicant may take advantage of two mitigating conditions (MC) of the Guidelines for foreign preference: E2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) and E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*).

Considering all of the circumstances surrounding Applicant's renewal of possession of an Egyptian passport as a dual citizen of Egypt and meaningful mitigation efforts, conclusions warrant that Applicant's exhibited active dual citizenship by his obtaining an Egyptian passport after becoming a naturalized U.S. citizen and showing it on one occasion is mitigated. By mitigating the Government's preference concerns, Applicant demonstrates his continued preference for the US since becoming a naturalized U.S. citizen. Applicant's demonstrated preference for the U.S. satisfies his burden requirements in successfully overcoming the Government's claimed security risks. Favorable conclusions warrant with respect to subparagraphs 1.a through 1.c of Guideline C.

Foreign Influence

Besides foreign preference concerns, Government finds security risks associated with Applicant's (a) regular contacts with his brothers/sisters and stepbrother who are citizens and residents of Egypt, and (b) his four trips Egypt after becoming a naturalized U.S. citizen in 1976. Although Applicant's ties to his siblings and ste-brother do not appear to be particularly close, they are sufficient to invite application of Disqualifying Conditions (DC) E2.A2.1.2.1 (*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*) and E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence*) of the Adjudicative Guidelines for foreign influence.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments continue to be governed by the same Change 4 requirements of the Directive for appraising the security risks associated with the individual's having family abroad, which include both common sense assessments of country risks and information available from public sources.

While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the character of the

subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Egypt is an independent republic that is constitutionally constituted and governed by executive and legislative branches whose leadership and influence are directed and circumscribed by secular tenets that confirm the place of the rule of law in the Government's institutional hierarchy. Although its judiciary has been weakened recently by the Emergency Law that allows terrorism cases to bypass the courts to specially constituted military courts, Egypt's overall country status remains stable and capable of protecting traveling American citizens who chance to come in contact with its institutions.

So, under these adjudicative guidelines, while an applicant with immediate and extended family members domiciled in a hypothetical hostile country might pose a risk of a hostage situation, he might conversely be able to neutralize material risks of exploitation of immediate and/or extended family members residing in a friendly country. Egypt, despite its poor human rights record, remains a strategic ally of the U.S. in one of the most volatile regions in the world (according to State Department official publications). Egypt is characterized as a functioning democracy with a transitioning economy and tightened security procedures for addressing counter-terrorism and related law enforcement issues.

Under such circumstances as are presented herein, Applicant's immediate and extended family members (with whom Applicant's contacts are infrequent for the most part) are not exploitation risks under the conditions and criteria included in the Guidelines. Applicant may invoke mitigating conditions E2.A2.1.3.1 (*A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States*) and E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*) to mitigate security concerns associated with his having members who are citizens and residents of Egypt.

Any residual security concerns arising out of Applicant's having family members who are citizens and residents of Egypt are sufficiently mitigated by Applicant's demonstrated U.S. preference and strong ties to the U.S. to permit safe predictive judgments about his ability to withstand risks of exploitation and pressure attributable to his familial relationships and contacts with his immediate and extended family members domiciled in Egypt. Favorable conclusions warrant with respect to subparagraphs 2.a and 2.b of Guideline B.

Falsification issues

Posing potential security concerns are Applicant's omissions of his siblings and all of his trips to Egypt in his completed December 2000 SF-86. His omissions, however, are attributable to his mistaken reading of question 9 and his inadvertent failure to list all of his trips to Egypt to see his family. Applicant's explanations of his omissions were persuasive enough to avert inferences of knowing and wilful omission and enable him to refute the allegations of falsification governed by Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2.2.1 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance:

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 3.a: FOR APPLICANT

Sub-para. 3.b: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge