

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Although applicant has lived in the United States since 1980, he maintains significant ties to Egypt. In addition, he did not respond truthfully to questions dealing with his ties to Egypt on a Security Clearance Application (SCA). Clearance is denied.

CASENO: 03-22831.h1

DATE: 06/22/2005

DATE: June 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22831

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Jack H. Robbins, Esq.

SYNOPSIS

Although applicant has lived in the United States since 1980, he maintains significant ties to Egypt. In addition, he did not respond truthfully to questions dealing with his ties to Egypt on a Security Clearance Application (SCA). Clearance is denied.

STATEMENT OF THE CASE

On May 19, 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, (as administratively reissued on April 20, 1999), 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 denied or revoked.

Applicant responded to the SOR in writing on July 8, 2004. The case was assigned to the undersigned on September 10, 2004. A Notice of Hearing was issued on February 1, 2005, and the hearing was held on February 25, 2005. Following the hearing, applicant submitted a five page packet of documents. These documents, and Department Counsel's March 10, 2005 letter indicating he has no objection to applicant's post-hearing submission, were marked as Exhibit F and admitted into evidence. The transcript was received on March 8, 2005.

FINDINGS OF FACT

Applicant is 52 years of age. He has been employed by the same defense contractor for 15 years.

Applicant was born and raised in Egypt. In 1980, he left Egypt and moved to the United States. He came here to continue his education and "to get a better life" (TR at 44). In 1986, he became a United States citizen.

Applicant and his wife were married in Egypt in 1980. Three of their four children were born in the United States; the fourth was born in Egypt in the late 1980s. The wife, and the child who was born in Egypt, became naturalized United States citizens in 1990.

Applicant has five siblings. These three sisters and two brothers are citizens and residents of Egypt. One of his brothers, who is now about 58 years of age, was a senior officer in the Egyptian military. Applicant believes he was the equivalent of a Colonel, and that he retired three or four years ago. They are reasonably close (TR at 51-52). Applicant telephones his siblings on a rotating basis once every two or three weeks.

Applicant's mother-in-law and father-in-law are citizens and residents of Egypt. The father-in-law is a former employee of the Egyptian government. He retired about 20 years ago. Applicant's wife has no family living in the United States.

When he was living in Egypt in the late 1970s, applicant purchased an apartment for approximately \$20,000.00. Applicant testified that the apartment building was never completed. He further testified that, although he never "check[ed] with anyone to see if [he still had an] ownership interest," he eventually formed the opinion that his money was lost. When he heard that this potential interest in the apartment could jeopardize his clearance, he wrote a letter⁽¹⁾ giving his interest to his sister and mailed the letter to the sister. (Exhibit C; TR at 58-60).

Applicant rented an apartment in Egypt in the 1970s. Applicant testified that he did so because he was planning to get married and apartments are very scarce in Egypt (TR at 60-61). Applicant still has the apartment. He uses it when he and his family visit Egypt. It costs him about \$100.00 a year in rent, far cheaper than a hotel room would cost him. Applicant testified that he would give up the apartment if it jeopardized his security clearance (TR at 62).

Applicant obtained a United States passport a month after he became a United States citizen. He has traveled to Egypt on at least three occasions since he became a United States citizen. While traveling to Egypt on one or more of these trips, he used his Egyptian passport "in conjunction with the United States passport" when entering Egypt (TR at 64). He did so to avoid the requirement that he register with the Egyptian government. In 2004, he mailed the passport to

Egyptian authorities. The passport was marked "cancelled" and mailed back to applicant. In February 2005 he mailed it back to Egyptian authorities. (Exhibits B and F; TR at 64-65).

Applicant offered into evidence a letter he sent to the Egyptian consulate in early 2005 renouncing his citizenship (Exhibit A). The letter has no identifying information on it (e.g., date of birth, place of birth) other than applicant's name, and there is no evidence indicating that Egyptian authorities acted on the letter. This letter, and applicant's testimony (TR at 68-69), support a finding that applicant has expressed a willingness to renounce his Egyptian citizenship; however, this evidence does not support a finding that applicant is no longer an Egyptian citizen.

Applicant completed and executed an SCA in March 2001 (Exhibit 1). On said SCA, applicant responded "no" to the following question: "Do you have any foreign property, business connections, or financial interests?" Applicant's response was false because, as noted above, at the time he executed the SCA, he had an ownership interest in an apartment in Egypt, and had a long-term lease on another apartment in Egypt. Applicant denies he intended to deceive the Government. He testified that when he executed the SCA, the apartment that he owned was not on his mind. He further testified that had it been on his mind, he believes he would have called the security department for advice on how to respond to the question. With respect to the apartment he rents, it was on his mind, but he did not believe this was a "financial interest" (TR at 74-76). (He offered no credible testimony regarding why the rented apartment did not qualify as "foreign property.") Had this "no" response been applicant's only falsification, his denial of an attempt to deceive may have been credible. However, considering the fact he provided false responses to two other questions dealing with his ties to Egypt (see below), his denial is not credible. Accordingly, I find that applicant intentionally provided the false response in an attempt to conceal his foreign financial interests and/or foreign property interests from the Government.

On the same SCA, applicant responded "no" to Question 11, which appeared on the SCA as follows:

11. Your Military History

Have you ever served in the military? (If yes, provide in chronological order your military history: begin with the most recent period and include Reserves, National Guard, Merchant Marines and Foreign Military service.)

Applicant's "no" response to Question 11 was false because he had served in the Egyptian military for about a year while he was in his twenties. Applicant testified that he did not intend to conceal his foreign military service. He further testified that when he read the question, in his mind it was "talking about military service in the United States" (TR at 76-78). He later testified that he thought it was referring to serving in the United States military, but serving overseas (TR at 93). Applicant's explanations were not credible. Accordingly, I find that applicant intentionally provided the false response.

Although not alleged, on the same SCA, applicant provided a false response to Question 15, which asked: "In the last 7 years, have you had an active passport that was issued by a foreign government?" Applicant responded "no," when in fact he had an active Egyptian passport during the specified time. (2)

A manager at applicant's place of employment appeared at the hearing. He testified that he worked with applicant for about nine years, two years as a colleague and seven years as applicant's manager. He further testified that applicant is a dedicated and conscientious employee who is extremely honest and extremely loyal to the United States.

An individual who has worked closely with applicant during the past ten years appeared at the hearing and testified that applicant is highly competent, highly dependable, honest, and loyal to the United States.

An officer in the United States military appeared at the hearing and testified that he has worked with applicant during the past two and one-half years. He further testified that applicant is competent and dedicated to his job, truthful, and in the witness's opinion, loyal to the United States.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant's five siblings are citizens and residents of Egypt. This fact requires application of Disqualifying Condition E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*).

Once the Government established the applicability of Disqualifying Condition E2.A2.1.2.1, the burden shifted to applicant to establish that Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member is not an agent 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*) is applicable. Applicant failed to meet his burden. With respect to applicant's brother who was an officer in the Egyptian military, although applicant testified he is retired, this is insufficient evidence to establish the brother is no longer an agent of Egypt. Given the brother's status as a senior officer when he retired, and his relatively young age at the present time, it would be naive to conclude with any degree of certainty that the brother is no longer associated with the Egyptian military. In addition, the evidence does not establish that applicant's immediate family members are not in a position to be exploited by Egypt in a way that could force applicant to choose between loyalty to the United States and loyalty to his immediate family members. Based on the foregoing, Guideline B is found against applicant.

With respect to Guideline C, the evidence establishes that after he became a United States citizen in 1986, applicant retained and used his Egyptian passport. This fact requires application of Disqualifying Conditions E2.A3.1.2.1 (*the exercise of dual citizenship*), and E2.A3.1.2.2 (*possession and/or use of a foreign passport*). In addition, Disqualifying Condition E2.A3.1.2.3⁽³⁾ applies because applicant served in the Egyptian military.

In mitigation, applicant's Egyptian citizenship is based solely on his birth in that country, he has expressed a willingness to renounce it, he has surrendered his Egyptian passport, and his Egyptian military service occurred before he became a United States citizen. Accordingly, he qualifies for Mitigating Conditions E2.A3.1.3.1 (*dual citizenship is based solely on birth in a foreign country*), E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*), and E2.A3.1.3.2 (*foreign military service occurred before obtaining United States citizenship*). Based on the foregoing, and the fact applicant has not shown a preference for Egypt over the United States since arriving in the United States 25 years ago, Guideline C is found for applicant.

With respect to Guideline E, the Government has alleged and proven that applicant intentionally provided false material information in response to two questions on an SCA. These falsifications of material facts about his ties to Egypt on the SCA are extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. Applicant's intentional falsifications require application of Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*). No Mitigating Conditions apply.

I have considered the testimony of applicant's witnesses that applicant is honest and truthful. However, because there is no credible evidence that any of these witnesses are aware of applicant's SCA falsifications, I cannot give this testimony much weight. Based on the foregoing, Guideline E is found against applicant.

FORMAL FINDINGS

GUIDELINE B: AGAINST THE APPLICANT

GUIDELINE C: FOR THE APPLICANT

GUIDELINE E: 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.

Joseph Testan

Administrative Judge

1. The letter was written in 2004.
2. Applicant's Egyptian passport did not expire until 1996.
3. "Military Service or a willingness to bear arms for a foreign country."