

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Egypt but is now a naturalized U.S. citizen. His parents, siblings, wife, and her parents are all citizens of Egypt. His wife is now a permanent resident alien in the U.S., but one sister lives in Canada, and the rest of Applicant's family and his in-laws live in Egypt. Applicant travels to Egypt frequently, owns property there to use when he visits, and wants to retain his Egyptian citizenship for cultural reasons. He has failed to present information to mitigate the resulting security concerns under Guideline B (Foreign Influence). Clearance is denied.

CASENO: 03-02041.h1

DATE: 08/23/2004

DATE: August 23, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02041

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Egypt but is now a naturalized U.S. citizen. His parents, siblings, wife, and her parents are all citizens of Egypt. His wife is now a permanent resident alien in the U.S., but one sister lives in Canada, and the rest of Applicant's family and his in-laws live in Egypt. Applicant travels to Egypt frequently, owns property there to use when he visits, and wants to retain his Egyptian citizenship for cultural reasons. He has failed to present information to mitigate the resulting security concerns under Guideline B (Foreign Influence). Clearance is denied.

STATEMENT OF THE CASE

On December 15, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (Foreign Influence). The SOR informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding, based on available information, that it is clearly consistent with the national interest to continue Applicant's security clearance. ⁽¹⁾

On January 21, 2004, Applicant responded to the SOR (Answer), wherein he admitted all but one ⁽²⁾ of the allegations and chose to have his case decided without a hearing. On May 13, 2004, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which Applicant received on May 20, 2004. Applicant was afforded 30 days from receipt of the FORM to file a response and submit additional supporting information, but he did not do so. The evidentiary record closed on June 24, 2004, and the case was assigned to me on July 9, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 33 years old and employed by a defense contractor. He requires a security clearance in connection with his employment.

Applicant was born in Egypt in 1970. He came to the U.S. in 1992 on a student visa. In 1995, he won an immigration lottery and was given permanent resident alien status. In 1997, he returned to Egypt to study for one year. Since returning in 1998, Applicant has worked as an electrical engineer. He was naturalized as a U.S. citizen in February 2001, but does not wish to renounce his Egyptian citizenship for cultural reasons.⁽³⁾

Applicant's father is a retired Egyptian army officer and electrical engineer. His mother is a hospital administrator. Both parents are citizens of and live in Egypt. Applicant has two sisters, both of whom are Egyptian citizens. Both are teachers, one in Canada and one still in Egypt. The latter sister is engaged to a naturalized American citizen originally from Egypt and plans to move to the U.S.

Applicant's father-in-law and mother-in-law are citizens of and live in Egypt. He is a doctor and she teaches college accounting. Neither has any apparent connection to the Egyptian government.⁽⁴⁾

Applicant traveled back to Egypt for personal reasons six times between October 1995 and August 2001. He also bought a condominium there at the behest of his wife's family as they wanted to ensure he and his wife would come back to Egypt to visit at least annually. Applicant paid \$7,000 down and makes semi-annual payments of \$1,800 (or about \$250 monthly) through his mother in Egypt.⁽⁵⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽⁶⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions

under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair, impartial, and commonsense consideration of all of available relevant and material information, and application of the pertinent factors and criteria provided in Enclosure 2 of the Directive. Further, the Administrative Judge must consider as appropriate the "whole person" factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed in the Directive under Guideline B (Foreign Influence).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁷⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁸⁾

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽⁹⁾

CONCLUSIONS

Under Guideline B, 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 create the potential for foreign influence increasing the risk of 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.⁽¹⁰⁾

The SOR alleges that Applicant has foreign ties of affection through his wife (SOR 2.a), his parents (SOR 2.b), his wife's parents (SOR 2.c) and his sisters (SOR 2.d). Also alleged as evidence of possible foreign influence are his recent purchase of property in Egypt at the behest of his wife's parents (SOR 2.e) and his frequent travel since 1995 back to Egypt (SOR 2.f). Applicant denied the allegation in SOR 2.a on grounds that his wife, while still an Egyptian citizen, is also now a permanent resident alien in the U.S. and is eligible to apply for U.S. citizenship in 2008. He admitted the remaining SOR allegations.

Department Counsel has established, through Applicant's admissions to these allegations and through the FORM and its enclosures, a *prima facie* case for disqualification under Guideline B. The record supports application of disqualifying condition (DC) 1. ⁽¹¹⁾ Applicant's immediate family is comprised of Egyptian citizens. Even were I to exclude the fact that his wife is a permanent resident alien here and his sisters have both left Egypt, Applicant still has close ties of affection to his parents and his wife's parents in Egypt. These facts support a finding the Applicant or his relatives may be subject to coercion by the a foreign government.

On the facts in this case, the only available mitigating condition (MC) potentially available to Applicant is MC 1; ⁽¹²⁾ however, Applicant must show that his foreign ties of affection are not agents of or otherwise connected to a foreign government, *and* that they are not vulnerable to exploitation by a foreign government in a way that would affect Applicant's commitment to protecting U.S. classified information. Applicant has not met his burden of proof on this issue. He has shown only that, except for his father's status as a retired senior Egyptian military officer, none of his family is connected with the Egyptian government. His wife is now a permanent resident alien, but still has strong ties to her family in Egypt, as shown by Applicant's purchase of a condominium there to satisfy his wife's family that he will bring her back to Egypt for future visits. Applicant's foreign ties of affection clearly extend to his wife's family. Because of his father's status and absent other information to support application of both prongs of MC 1, I conclude Applicant has failed to mitigate the security concerns engendered by his ties of affection in Egypt. I conclude Guideline B against the Applicant.

Applicant had the opportunity to respond to the FORM and present information to be considered in this regard. He did not avail himself of that opportunity, so I am limited to consideration of his Answer to the SOR and the information submitted in the FORM. In particular, I note that Applicant does not wish to renounce his Egyptian citizenship for cultural reasons. Renunciation of one's foreign citizenship is not required to receive a security clearance and dual citizenship is not illegal. Indeed, it is only addressed as a mitigating condition under Guideline C, not at issue here. Nonetheless, in weighing the record evidence as a whole, Applicant's affirmative statement to government investigators about his foreign citizenship bears security significance and cannot be ignored here as it serves to underscore his close ties to his family in Egypt.

A fair and commonsense assessment ⁽¹³⁾ of Applicant's foreign ties of affection raises reasonable doubts about Applicant's ability to safeguard classified information unfettered by foreign influence. Such conflicting interests might hinder his ability to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I

conclude the record evidence shows Applicant has not overcome the information supporting the government's decision to deny Applicant access to classified information.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant denied SOR 1.a.
3. FORM Items 4 and 5.

4. FORM Items 3 and 6.
5. Id.
6. Directive, Enclosure 2.
7. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. *See Egan*, 484 U.S. at 528, 531.
9. *See Egan*; Directive E2.2.2.
10. Directive, E2.A2.1.1.
11. Directive, 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 or present in, a foreign country;
12. Directive, E2.A2.1.3.1. 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;
13. Directive, E2.2.3.