

DATE: January 24, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-06097

## **DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn MacKinnon, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a native-born citizen of the United States, had dual citizenship with Egypt that he has now renounced. He possessed an expired Egyptian passport that he has surrendered. He has limited contact with extended family members residing in Egypt. His wife, a naturalized U.S. citizen, has an apparently insubstantial bank account in Egypt that was established by her father. Applicant credibly explained the inaccurate answers he provided in a security clearance application he submitted in April 2002. He has mitigated the foreign preference, foreign influence, and personal conduct concerns that existed. Clearance is granted.

### **STATEMENT OF THE CASE**

On April 13, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence), Guideline C (foreign preference), and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on May 17, 2004, requested a hearing, and denied all Guideline B allegations, admitted all but one Guideline C allegation, and admitted both Guideline E allegations, although it is clear from his explanations that he was not admitting to deliberately providing false answers in the security clearance application in issue.

The case was assigned to me on September 15, 2004. A notice of hearing was issued on November 4, 2004, scheduling the hearing for December 1, 2004. The hearing was conducted as scheduled. The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8. GE 1-3 and GE 5-8 were admitted into the record without objection, and administrative notice was taken of GE 4 without objection. Applicant testified, called two witnesses, and submitted nineteen documentary exhibits that were marked as Applicant's Exhibits (AE) 1-19, and admitted into the record without objection. The transcript was received by DOHA on December 9, 2004.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 50-year-old man who has been employed by a defense contractor as an engineer since November 1981. He has been married since January 1985, and has three daughters, ages 19, 14, and 9. His oldest daughter is a college sophomore, attending a state-supported school on an academic scholarship. He and his family have lived in the same house, which he is purchasing, since January 1991. Applicant has possessed a secret security clearance since 1980, and there have never been any complaints made against his alleging mishandling of classified material. No administrative action has been taken to revoke or downgrade his clearance other than that in issue here.

Applicant was born in the United States of parents who were Egyptian citizens, thus providing him with dual citizenship. He returned with his parents to Egypt when he was still an infant. His father died in Egypt when Applicant was 14 years old, and he thereafter resided with his mother. He attended school in Egypt, and obtained a bachelor of science degree in electrical engineering from an Egyptian university in 1977. He was exempted from military service in Egypt based upon his status as a sole surviving son.

As a Coptic Christian, Applicant felt discriminated against in his career pursuits, being limited to working as a technician despite having a degree in engineering. Accordingly, he returned to the United States in 1979 to seek employment as an engineer. Although living in Egypt, Applicant obtained a U.S. passport when he was 18 years old, and used that passport to enter the U.S. He was, however, required to use an Egyptian passport to exit Egypt.

Applicant's mother traveled to the U.S. in 1980 to take up residence with him, and has lived in his house since. She is 85 years old, and became a naturalized U.S. citizen in approximately 1999. Applicant met his wife, a then Egyptian citizen, at his church in 1984 while she was in the U.S. on a student visa. He returned to Egypt with her in 1984 for their marriage which took place there in January 1985. Applicant's wife became a naturalized U.S. citizen in approximately 1997. His daughters are all U.S. citizens by birth.

Applicant's brother-in-law is a citizen and resident of Egypt. Although Applicant doesn't have a particularly close relationship with his brother-in-law, he does speak to him on those occasions when his wife has telephone contact with him. This may be as frequently as weekly. Applicant also has two cousins who are citizens and residents of Egypt, and with whom he speaks by telephone on special occasions.

Applicant does not own any property in Egypt. His wife does have an account with an Egyptian bank that was opened by her father a number of years ago. Applicant is not certain how much money is in the account because he considers that to be her personal business which he has not inquired about. He thinks it may contain about \$1,000.00. Applicant's wife is willing to close the account, but thinks she has to travel to Egypt to accomplish that goal.

Applicant's salary is \$109,000.00 annually. His wife works as a pharmacist and earns about \$81,000.00 annually. They own a house that they purchased in 1994 for \$200,000.00 that is now worth more than \$400,000.00. Applicant has a 401K plan through his employer that is worth approximately \$195,000.00, and an IRA that is worth about \$55,000.00. He also has education accounts for his children that contain about \$15,000.00.

Applicant obtained an Egyptian passport when he resided in Egypt that expired in 1980. He used his U.S. passport for all foreign travel. However, on each occasion when he traveled to Egypt he displayed the expired Egyptian passport upon arrival in Egypt because he then did not have to obtain a visa. He did not intend this as an exercise of foreign citizenship, and did not know it would create a security concern, but simply used the Egyptian passport in this manner to save the inconvenience of applying for and obtaining a visa. He surrendered the passport and renounced his Egyptian citizenship in November 2004, after learning that those matters created security concerns.

In addition to the 1984 travel to Egypt to get married, Applicant traveled there on three other occasions. He visited in 1987 to attend his father-in-law's funeral, in 1994 for pleasure, and in 2002 to attend his mother-in-law's funeral. The 2002 visit was from either March 13 or March 31 and lasted until April 7, 2002. Applicant has also traveled to Canada to visit relatives.

Applicant's wife initially had some difficulty remaining in the U.S., because the program she was involved with required her to perform two years mandatory service for Egypt following completion of her stay in the U.S. After she and Applicant were married, she decided she did not want to return to live in Egypt and went through a protracted battle to rid herself of that obligation. She was finally successful, with the help on an attorney supplied by Applicant's employer, and arranged a financial settlement that has been paid to be free of the obligation. She visited the Egyptian embassy with Applicant on numerous occasions while that matter was pending.

Applicant submitted a security clearance application (SF 86) in April 2002. The government offered two versions of the SF 86, one showing a submission date of April 8, 2002 (GE 2), and the other a submission date of April 10, 2002 (GE 1). GE 1 was signed by Applicant on April 30, 2002. Applicant's recent travel to Egypt is not reflected in either version. Applicant credibly testified he had supplied the information before his travel to Egypt for his mother-in-law's funeral and did not notice the incorrect answer when he signed the document. This claim is abundantly supported by Applicant's supervisor's testimony that Applicant notified his employer of the travel before it occurred.

Applicant also did not disclose his multiple trips to the Egyptian embassy in the SF 86. He explained the trips to the Egyptian embassy, and his reason for not listing them in the SF 86, in his answer to the SOR as follows:

These visits to the Embassy of Egypt, was for a matter that concerned my spouse's residing in the United States. I had to drive her to the embassy because she was new in the country and needed my support. I did not consider this to be "foreign activity." My wife came to the States on a peace fellowship for 2 years. She wanted to terminate the fellowship. She had to get Egypt's permission to do so and to get the approval to stay in the United States. These were the reasons for going to the embassy. And I did not consider it as foreign activity because it was about my wife's matter and not myself.

Applicant's explanation is credible.

Applicant's witnesses and letters of recommendation from business and social acquaintances establish he is considered to be a capable engineer who follows regulations and that he is not perceived to pose any security threat. He has a reputation for being truthful, honest, and a loyal U.S. citizen. Applicant has applied for 15 patents and been awarded four. He has had published ten papers in professional journals, and has received numerous awards in connection with his employment. Applicant is extremely active in his church and religion.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, Guideline C, pertaining to foreign preference, and Guideline E, pertaining to personal conduct, with their respective DC and C, are most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

## CONCLUSIONS

**Foreign Preference.** 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.

Disqualifying Condition (DC) 1: *The exercise of dual citizenship* and DC 2: *Possession and/or use of a foreign passport* are acts that demonstrate a foreign preference. Applicant was a dual citizen of the U.S. and Egypt based upon his birth in the U.S. to citizens of Egypt. He obtained an Egyptian passport and, although it expired in 1980, used in on several occasions to facilitate his travel to Egypt. Accordingly, the government has established its case under Guideline C. Applicant clearly considers the small bank account his wife has in Egypt to be her exclusive property and it does not create any additional security concern.

Applicant has now surrendered his Egyptian passport and renounced his Egyptian citizenship. With the exception of the limited use of the Egyptian passport that was done merely for convenience, Applicant has not otherwise exercised his Egyptian citizenship. Instead, he has clearly demonstrated by words and actions that, since at least 1979, he considers himself solely to be a U.S. citizen. Mitigating Conditions (MC) 1: *Dual citizenship is based solely on parents' citizenship or birth in a foreign country* and MC 4: *Individual has expressed a willingness to renounce dual citizenship* apply. Applicant has mitigated the foreign preference security concern, and Guideline C is decided for Applicant.

**Foreign Influence.** 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 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.

Applicant's only relatives in Egypt are two cousins and a brother-in-law. He has limited contact with his cousins consisting of telephone conversations on special occasions. Although he speaks with his brother-in-law more frequently that is more out of respect for his wife than any particular closeness to the brother-in-law. None of Applicant's relatives are connected with the Egyptian government, and there is no indication there is a potential for foreign influence or duress due to the extended family members he has in Egypt. Further, since returning to the U.S. in 1979, Applicant has only traveled to Egypt on one occasion to vacation and visit relatives, with his other travel being limited to attending two funerals and his own wedding.

Although Applicant retained and used his expired Egyptian passport in lieu of obtaining a visa, he did not intend or view it as an exercise of dual citizenship. Rather, it was simply an easy way to avoid the inconvenience of obtaining a visa. Once Applicant learned of the security concern this conduct created, he not only surrendered the passport but also renounced his dual citizenship with Egypt.

Finally, the account Applicant's wife maintains in Egypt does not create a security concern. Applicant has no interest in the account, and is not even aware of how much money there is in the account. His estimate of \$1,000.00 clearly indicates how insignificant the account is when compared with the rather substantial assets Applicant owns in the United States. Considering all evidence, no foreign influence disqualifying condition applies, and Guideline B is decided for Applicant.

**Personal Conduct.** Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Applicant failed to disclose his March 2002 travel to Egypt in the SF 86 he submitted in April 2002. His explanation for failing to do so is particularly credible considering the testimony of his supervisor that he disclosed the travel to his

employer before he went to Egypt. Likewise, Applicant's explanation for not disclosing the times he accompanied his wife on her visits to the Egyptian embassy is credible. Considering all evidence, no personal conduct disqualifying condition applies, and Guideline E is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline C: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

SOR ¶ 2-Guideline B: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Subparagraph f: For Applicant

SOR ¶ 3-Guideline E: For Applicant

Subparagraph a: For Applicant

Subparagraph 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 a security clearance for Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

9. *Egan*, 484 U.S. at 528, 531.

10. *Id* at 531.

11. *Egan*, Executive Order 10865, and the Directive.