

KEYWORD: Foreign Influence

DIGEST: Applicant failed to mitigate allegations of foreign influence arising from his marriage to an Egyptian, his ownership of property in Egypt, relatives of his wife living in Egypt, and contacts with an Egyptian military attache while working in Romania. Clearance is denied.

CASENO: 04-04112.h1

DATE: 12/22/2005

DATE: December 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04112

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate allegations of foreign influence arising from his marriage to an Egyptian, his ownership of property in Egypt, relatives of his wife living in Egypt, and contacts with an Egyptian military attache while working in Romania. Clearance is denied.

STATEMENT OF THE CASE

On April 15, 2005, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated April 21, 2005, Applicant responded to the allegations set forth in the SOR admitting the specifics of all but offering explanatory information. He requested a hearing. The case was assigned to me on June 27, 2005, and a Notice of Hearing was issued August 10, 2005, for a hearing held on August 30, 2005. The government introduced seven exhibits at the hearing and requested that administrative notice be taken of six. The Applicant introduced eight exhibits. All were accepted into evidence. The Applicant, his wife, and three other witnesses

testified on his behalf. The transcript was received on September 19, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 56-year-old employee of a defense contractor working as an engineer on radar equipment primarily used for civil aviation. He has worked for the company for 18 years. He served 20 years in the Marine Corps with the rank of sergeant. He held a security clearance during his military service but has not held one since 1990. His work requires extensive travel abroad for lengthy periods of time. In 1999, while working in Egypt over an eight month period for his employer, he met an Egyptian woman working in the hotel where he lived. After a one year engagement, they were married in 2000. He traveled to Egypt approximately 20 times between 1999 and 2002. He advised his company of the marriage, but did not advise them when he became engaged to a foreign national. His two previous marriages, from which he has four children, had ended in divorces leading to some financial difficulties including a bankruptcy

Since their marriage his wife lives primarily in the U.S. and holds a multiple entry visa for the U.S. She intends to become a U.S. citizen. At the time of their marriage, Applicant believed that custom required that he rent her an apartment in Egypt and furnish it with new furniture so that she could live there in comfort when in Egypt. He did so and she resides there several months of the year especially when his work takes him abroad and she is unable to travel with him. He pays the equivalent of \$85.00 per month for the apartment. They own a home in the U.S.

Applicant's wife has several relatives in Egypt including her parents and three siblings. None are employed by the Egyptian government. Applicant has very little contact with them although his wife has telephone contact weekly. He has two bank accounts in Egypt one for a dollar account and a second for British pounds. The total for both is slightly less than \$2,000.00 but at one point exceeded \$20,000.00.

Applicant became a Muslim and took an Arabic name at sometime before marrying his wife but did not advise his family members of this fact for several years. He believed that his wife could not marry someone who was not a Muslim, however, he did not convert in order to marry her. Witnesses who testified for him were unaware of the new

name and his conversion. His children were unaware of these facts for several years. His wife has little contact with his children.

In 2002, Applicant was assigned by his company to work in Romania for an extended period. His wife accompanied him. The Egyptian military attache in Romania became a friend of both Applicant and his wife. The attache and his wife gathered Egyptian expatriates in their large home for social events. The attache spent an entire day trying to find an apartment in Romania for Applicant taking him about the city in his car. In discussing this relationship, Applicant testified that the attache was a "very outreaching type individual, who tries to take care of everyone" (Tr. 93), and when questioned about the attache's living style and being so engaged with the Egyptian community said, "I thought, man, this guy is lucky. Maybe he hit the jackpot by getting this job" (Tr. 100).

Applicant is well regarded by his fellow employees who also know his wife and do not regard him as in any way untrustworthy. His wife has a good reputation among those who know her.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential

for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of

denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable Guidelines concerning Guideline B Foreign Influence provides as a Disqualifying Condition (DC) that a security risk may exist when an individual's foreign associates to whom he has close ties of affection or obligation are not citizens of the United States or may be subject to duress. (E2.A2.1.1.) Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the associates 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 persons involved and the U.S.(E2.A2.1.3.1.)

Based on the evidence of record, including Applicant's admissions, the government established reasons to deny her a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has property interests in Egypt and his wife has close relatives living there. While none work for the government and do not hold significant positions in commerce, the fact that they are there and that she spends a

significant portion of the year there in her own apartment raises questions about her vulnerability to pressure that might be brought to bear on Applicant. His lack of concern regarding the military attache and the attention he focused on Applicant, his wife, and others in the Egyptian community was surprising, if not naive, for one who sought to obtain a security clearance. While that attention and concern may have been totally innocent, the lack of any skepticism by Applicant did not speak well of his security awareness.

Applicant has shown that his family members are not agents of a foreign power, but he does have a number of close relatives living abroad who are in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to them and to the U.S. (E2.A2.1.3.1.) His contacts with them are not frequent but because of the consanguinity of the relations through his wife, they are not casual. (E2.A2.1.3.3.) His bank account, while not now very large, it has been in the recent past and cannot be adjudged "minimal" as the guideline requires. (E2.A2.1.3.5.) While the eight month period that he worked in Egypt was for company business the contacts he made then with the woman who became his wife was not the result of U.S. Government business as the guideline requires. (E2.A2.1.3.2.) No other mitigating factors are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

DECISION

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard

Administrative Judge