

DATE: August 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05631

ECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born and raised in Egypt, and still has close ties there through his mother, siblings, second wife, and in-laws, all of whom are Egyptian citizens. Except for his wife, all his relatives and in-laws live overseas. In 1996, Applicant stayed in the U.S. illegally after his tourist visa expired, but regained legal immigration status that same year through his marriage to a U.S. citizen. Because the U.S. government made him a permanent resident alien notwithstanding his previous illegal status, the alleged personal conduct concerns are mitigated. Applicant has not mitigated the security concerns about possible foreign influence. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, Defense Office of Hearings and Appeals (DOHA) adjudicators were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On May 31, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (foreign influence) and Guideline E (personal conduct). On June 16, 2005, DOHA received Applicant's answer to the SOR, in which he denied with explanations all of the allegations and requested a hearing.

The case was assigned to a DOHA administrative judge on January 12, 2006, but was transferred to me on February 15, 2006, due to workload considerations. I convened a hearing on March 23, 2006, at which the parties appeared as scheduled. Of the 16 exhibits (G1 - G16) proffered by the government, 15 were admitted.⁽²⁾ Applicant testified and presented four exhibits, which were admitted as Applicant's Exhibit (Ax) A - D.⁽³⁾ DOHA received the transcript (Tr) on April 3, 2006.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 31 years old and works as a software engineer for a defense contractor. He was born and raised in Egypt, where he completed three years of university study in accounting before coming to the United States on a six-month tourist visa in July 1995. Thereafter, he attended a university in the U.S. and obtained his undergraduate degree in computer science in December 2000. Applicant obtained U.S. citizenship in July 2002.

Applicant has worked for his current employer since August 2003. He was unemployed from August 2002 until August 2003, but had worked previously for the same employer from April 2001 until August 2002. His employer and the government client his company supports speak highly of Applicant's work record and reliability. Applicant's first tenure with his company required access to sensitive systems and information based on a trustworthiness determination application Applicant submitted in January 2002, while Applicant was still a permanent resident alien.⁽⁴⁾ There is no information available regarding the actual outcome of that application.

Applicant has been married twice, the second time since August 2002. His current wife is a citizen of Egypt residing here as a permanent resident alien. As of the hearing, she was near completion of the requirements for U.S. citizenship. They have a daughter, born in the U.S. in 2003. Egyptian law recognizes dual citizenship and regards Applicant and his daughter as Egyptian citizens despite their status as U.S. citizens. Applicant's mother and six brothers are citizens of and still reside in Egypt. None of his immediate family have any ties to or are employed by the Egyptian government.

After Applicant's father died in September 2001, ownership of his house, where Applicant and his siblings grew up, and a small appliance business run from its ground floor passed to his widow and their children. For economic reasons, Applicant's six brothers still live in the house with their mother. The building is worth about \$7,000.

In August 2005, Applicant sponsored applications for four of his brothers to immigrate to the U.S. Applicant expects it will take up to four years for his brothers to actually move here.⁽⁵⁾ The remaining two brothers are studying accounting in college and Applicant hopes when they graduate they will sell the family residence and move to the U.S. with their elderly mother.

Applicant's wife's family - her parents, brother, and sister - are all Egyptian citizens. Her parents and brother live in Egypt, but her sister lives in Saudi Arabia with her husband who works there. None of Applicant's in-laws has ties to or is employed by either the Egyptian or Saudi governments. He and his wife hope to move her parents and her brother to the U.S.

Applicant talks or corresponds electronically with his mother and any brothers in the house every other month. He has traveled to Egypt seven times since 1995, most recently in December 2005 with his wife and child to celebrate a brother's marriage engagement. Applicant's wife returned to Egypt in the summer of 2005 to visit her ailing father.

In 2002, Applicant sent one of his brothers a check for \$8,000 to pay for a trip to the U.S. However, the brother never took the trip and returned the check to Applicant. In 2001, he sent his family in Egypt about \$6,000 to help pay for renovations on their house. Most of that money also was returned to Applicant. He maintains a bank account in Egypt as a matter of convenience for transfers such as the 2001 renovation money and money for his wife to use when she visits Egypt. Since 2001, the account has been mostly idle and currently has less than \$20 in it.

When Applicant came to the United States in July 1995, his stated intent was to travel, see the country, and have fun. But he also was thinking of going to college here. However, after entering the U.S. through New York City, he did not venture far from the northeast as he did not have much money when he arrived in the U.S. He sent his return plane ticket home for safe keeping as he was staying in a "Youth House" where he was concerned someone might steal his ticket. Applicant's father became ill and sold several personal possessions to raise money for medical treatment. Applicant claims his father also returned Applicant's plane ticket for a refund.⁽⁶⁾

When Applicant's tourist visa expired in January 1996, he had no money or plane ticket to return to Egypt, and had to rely on the generosity of fellow Egyptians for lodging and food. However, he took no action with any U.S. or Egyptian officials to extend his visa or otherwise resolve what was then an illegal immigration status. In late 1995, Applicant met an American woman whom he married in July 1996. At the time, he was 21 years old and she was 48 years old. Once

married to a U.S. citizen, he knew he would legally be able to obtain permanent resident alien status and stay here legally.⁽⁷⁾ The couple separated in 2000 and were divorced in January 2001.

Egypt and the United States maintain friendly relations. The U.S. provides a great deal of financial and military support, and both countries appear closely aligned in the global war on terror (GWOT) and in efforts to maintain stability in the Middle East. Egypt has a nominally democratic government consisting of an executive branch, a bicameral legislature, and an increasingly independent judiciary. However, one party has held an overriding majority in government since 1978, and only recently have open elections been held. The U.S. State Department has observed that Egyptian citizens have no meaningful opportunity to change their government. While Egypt has been aggressive in counter terrorism efforts, its domestic human rights record has been poor. Law enforcement and executive organizations have employed arbitrary arrests and torture in the name of rooting out terrorists and other enemies of the state. The results include deaths while in custody, disappearances while in custody, and suppression of anti-government expressions.⁽⁸⁾

Likewise, Saudi Arabia and the United States have traditionally had friendly relations. The Saudis are strategically and economically important to the U.S., and have generally been aligned with U.S. GWOT efforts and the war in Iraq. However, Saudi Arabia is governed by a monarchy served by an appointed council of advisors. A non-independent judiciary interprets Saudi laws, which are largely based on Islamic religious tenets. Security for westerners in Saudi Arabia is a concern because of recent terrorist activity there. For many of the same reasons as discussed above regarding Egypt, Saudi Arabia also has a poor human rights record.⁽⁹⁾

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹⁰⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to present evidence sufficient to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, applicants bear a heavy burden of persuasion to comply with the government's 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.⁽¹¹⁾ 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.⁽¹²⁾

The Directive sets forth adjudicative guidelines⁽¹³⁾ for consideration when evaluating an applicant's suitability for access to classified information. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section E2.2.1 of the Directive.⁽¹⁴⁾ 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 record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline B (foreign influence) and Guideline E (personal conduct).

CONCLUSIONS

Foreign Influence. The government alleged it is not clearly consistent with the national interest to grant Applicant's request for a clearance because his wife is a citizen of Egypt (SOR ¶ 1.a), his mother and six brothers, as well as extended family members, are citizens of and reside in Egypt (SOR ¶ 1.b), he occasionally sends money to his family in Egypt and once sent \$8,000 to one of his brothers there (SOR ¶¶ 1.c and 1.d), his wife's mother and brother are citizens of and reside in Egypt (SOR ¶ 1.e), his wife's sister is an Egyptian citizen living in Saudi Arabia (SOR ¶ 1.f), he has an ownership interest in his family's home in Egypt (SOR ¶ 1.g), he has traveled to Egypt at least six times since 1995 (SOR ¶ 1.h), and he maintains a bank account in Egypt through which he sends money to Egypt (SOR ¶ 1.i).

Department Counsel submitted sufficient information to support the SOR allegations. The facts established raise a security concern addressed in the Directive through Guideline B; namely, that 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.⁽¹⁵⁾ As to SOR ¶¶ 1.a, 1.b, 1.e, and 1.f, the facts established through the government's information support application Guideline B disqualifying condition (DC) 1 and DC 2.⁽¹⁶⁾ More specifically, DC 2 applies because Applicant's wife has close ties to her immediate family who are all Egyptian citizens and reside in Egypt and Saudi Arabia. By virtue of Applicant's close relationship with his wife, Applicant may also be subject to foreign influence exerted on his in-laws as well as on his own immediate family.

SOR ¶¶ 1.c, 1.d, and 1.h, do not, without more, raise security concerns. Travel to a foreign country and lending financial support to family members overseas are not acts which are disqualifying. Rather, they merely plead evidence that contributes to an overall conclusion that Applicant is close to his family in Egypt.

SOR ¶¶ 1.g and 1.i are potentially disqualifying under Guideline B DC 8.⁽¹⁷⁾ Just as a person's relatives or other close personal ties to a foreign country may be a source of influence by a foreign power, so, too, may a person's foreign business and financial interests be used to that end. Nonetheless, the facts here show Applicant's business and financial interests to be minimal. The house and business passed to the family as a whole when Applicant's father died, but Applicant is not directly involved in managing those assets and does not appear to derive income or other benefit therefrom. As to the bank account, it appears to be a passive account reserved for convenience when he and his wife travel to Egypt. Thus, these allegations are similar to SOR ¶¶ 1.c, 1.d, and 1.h; that is, they plead evidence of Applicant's close ties to his family in Egypt.

Having also reviewed the available mitigating conditions (MC) under Guideline B, I conclude MC 1⁽¹⁸⁾ does not apply here. While none of Applicant's immediate family or his wife's family are agents of a foreign power, available information is insufficient to show they are not in a position to be exploited by a foreign power. Both the Egyptian and Saudi governments have records of arbitrary and heavy-handed tactics against their citizenry in furtherance of government policies. The average citizen has little or no ability to effectively challenge government actions or to affect change where it is appropriate. Considering the available information about the questionable state of human rights in both countries, one cannot conclude Applicant's relatives there are not vulnerable to government pressure, whether for domestic security reasons or for reasons directed at U.S. interests.

Guideline B MC 3⁽¹⁹⁾ does not apply because, by definition, Applicant's ties to his family and his wife's family are not casual. Indeed, the evidence regarding his travel to Egypt, and the financial assistance he has offered his family undercuts a claim his ties to his relatives are anything but close. Of the remaining mitigating conditions listed under Guideline B, none has any potential application to these facts and circumstances. On balance, Applicant has not mitigated the security concerns about possible foreign influence.

Personal Conduct. The government also alleged it is not clearly consistent with the national interest to grant Applicant's request for a clearance because he remained in the U.S. illegally from the expiration of his tourist visa in 1996 until his marriage to a U.S. citizen later that year (SOR ¶ 2.a). Department Counsel submitted sufficient information to support that allegation and asserted this fact raises a security concern addressed in the Directive through Guideline E; namely, that Applicant's conduct in this regard involved questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, and could indicate he may not properly safeguard classified information.⁽²⁰⁾

It is uncontroverted that Applicant stayed in the U.S. illegally between the expiration of his tourist visa and his marriage to his first wife. The circumstances surrounding his marriage invite speculation he came to the U.S. on a tourist visa with no intention of returning to Egypt, and that his marriage was entered into solely for purposes of enabling Applicant to gain permanent resident alien status. Indeed, his statement to investigators during his background investigation showed he came here to travel and have fun, but had also considered going to college here. Further, he married a woman more than twice his age less than eight months after they met. Notwithstanding these unusual circumstances, the U.S. government recognized Applicant's marriage to a U.S. citizen as a proper basis for sponsorship. Presumably, when the

government issued Applicant his green card, the issuing authorities knew of his expired tourist visa and then-illegal status in this country.

Based on all of the available information about Applicant's conduct in this regard, only Guideline E DC 5⁽²¹⁾ has any possible application here. Staying in the U.S. after his tourist visa expired was a rule violation, but it was a single incident and not indicative of a pattern of dishonesty. Looking to the factors listed in Directive Section E2.2.1, I am mindful of the potential seriousness of his conduct and the real possibility he deliberately circumvented U.S. immigration laws.⁽²²⁾ However, it is also clear that this conduct was isolated, and occurred more than 10 years ago. Given the fact he has been here legally since late 1996, it is not likely to be a basis for pressure or coercion. On balance, the government has not established the conduct alleged in SOR ¶ 2.a presents a security concern for which Applicant should be disqualified from holding a security clearance. I resolve Guideline E for the Applicant.

A fair and commonsense assessment⁽²³⁾ of the entire record before me shows the government properly expressed reasonable doubts about Applicant's suitability to have access to classified information. The SOR was based on reliable information about his foreign ties and interests in Egypt and Saudi Arabia. Such issues bear directly on an applicant's ability to protect classified information, and to exercise the requisite sound, unhindered judgment and discretion expected of one in whom the government entrusts its interests. In response, Applicant has not presented sufficient information to mitigate the government's concerns in this regard.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

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

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.a: For the Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a: For 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 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. I excluded G6 *sua sponte* for reasons stated at the hearing (Tr., 25 - 33).
3. I left the record open until April 14, 2006, so that Applicant could obtain a reliable translation of AX D, which was originally written in Arabic. He timely submitted said translation, and, without objection, it is attached to the original of AX D.
4. G3.
5. Tr., 55.
6. G4; Tr., 71 - 73.
7. G4.
8. G8 - G13.
9. G14, G15.
10. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. *See Egan*, 484 U.S. at 528, 531.
12. *See Egan*; Directive E2.2.2.
13. Directive, Enclosure 2.
14. Commonly referred to as the "whole person" concept, these factor are as follows:
 - E2.2.1.1. The nature, extent, and seriousness of the conduct;
 - E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;
 - E2.2.1.3. The frequency and recency of the conduct;
 - E2.2.1.4. The individual's age and maturity at the time of the conduct;
 - E2.2.1.5. The voluntariness of participation;
 - E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;
 - E2.2.1.7. The motivation for the conduct;
 - E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and
 - E2.2.1.9. The likelihood of continuation or recurrence.
15. Directive, E2.A2.1.1.
16. 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; Directive, E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.
17. Directive, 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.
18. 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.

19. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.

20. Directive, E2.A5.1.1.

21. Directive, E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

22. Directive E2.2.1.1. The nature, extent, and seriousness of the conduct; and E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation.

23. Directive, E2.2.3.