

DATE: January 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10340

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 61-year-old engineer for a major defense contractor was born in Egypt in 1944. He first came to the United States in 1969 to work and attend college. He became a U.S. citizen in 1975. He received a security clearance in 1989 and has never has any security-related problems. Applicant retains his Egyptian citizenship, but has surrendered his Egyptian passport prior to the hearing. However, he states an intent to obtain a new Egyptian passport when he retires, in about five years, since he expects to spend considerably more time in that country. He regularly travels to Egypt to visit family. He states an understanding of his responsibilities to the U.S., but his words and conduct do not show an unequivocal preference for the U.S. over Egypt. Mitigation and/or extenuation have not been shown. Clearance is denied.

STATEMENT OF THE CASE

On June 24, 2005, 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 amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On July 18, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me on August 17, 2005. A Notice of Hearing was issued on September 16, 2005, setting the hearing for October 14, 2005. At the hearing, the Government offered seven documents (Government's Exhibits (GX) 1-7). Applicant testified and offered two documents (Applicant's Exhibits (AX) A and B). Applicant also submitted a timely post hearing document (AX C). The transcript was received at DOHA on October 27, 2005.

FINDINGS OF FACT

Applicant is a 61-year-old chief engineer for a defense contractor. He was born in Egypt in 1944, came to the United States in 1969, to work and attend college. He became a citizen in 1975 and obtained a U.S. passport that same year. His Egyptian-born wife is an American citizen and a physician. He has four children, all of whom are U.S. citizens. A brother, now deceased, was a U.S. Navy Captain (Tr at 33). Applicant has held a security clearance for 18 years (Trat 24). He is planning to enter law school (Tr at 25).

The SOR contains three allegations, 1.a.-1.c., under Guideline C (Foreign Preference) and three allegations, 2.a.-2.c., under Guideline B (Foreign Influence). In his response to the SOR Applicant admits, with explanations, allegations 1.a. and 1.b., and 2.a.-2.c. He denies allegation 1.c. The factual admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of

Fact as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant no longer holds an Egyptian passport, but he remains a dual United States and Egyptian citizen. He intends to obtain a new Egyptian passport when he retires, in about five years.

1.b. - Applicant possessed an Egyptian passport, which he used only for identification purposes while in Egypt, such as when renting cars (Tr at 25). For all other purposes, he used only his U.S. passport (Response). He has surrendered his Egyptian passport (AX C), but he intends/expects to obtain a new one when he retires.

1.c. - In July 2002, years after he had become a naturalized American, Applicant applied for and received a valid Egyptian passport. This passport has now been surrendered to Egyptian authorities (Id.), but he intends to renew it in about five years.

Guideline B (Foreign Influence)

2.a. - Applicant's brother and sister are citizens of and resident in Egypt. Both are professional people, but not connected the government. Another brother, now deceased, was a U.S. citizen and resident, a physician, and a retired U.S. Navy officer (GX 2).

2.b. - Applicant's brother-in-law and sister-in-law are citizens of and resident in Egypt.

2.c. - Applicant travels to Egypt almost every year, with the last trip being in September 2005 (AX B). He spends two or three weeks when he goes, mostly visiting family (Response to SOR). He intends to spend more time in Egypt when he retires in about five years.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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, E.2.2. 1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted

facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in 1944. He came to the U.S. in about 1969. He became a U.S. citizen in 1975 and obtained a U.S. passport. He received his PhD from a major U.S. University in 1982. His wife is an American citizen, as are his children, one of whom is a surgeon who was part of the rescue effort in New York after 9/11 (Tr at 24). Applicant began working for his present employer in 1986, rising to the position of Chief Engineer. He was issued a security clearance by DoD in 1989 (GX 1). He has never been approached by anyone to act improperly and he has never had any security-related problems. He has received "numerous commendations and would proudly say that my work has contributed substantially to our national security" (Response to SOR).

Guideline C (Foreign Preference) - Applicant is proud to "call [himself] an American" (Id.). Applicant testified that he intended to renounce his Egyptian citizenship when he took his oath of allegiance to the United States (Tr at 45). It is his understanding, however, that Egypt still considered him to be a citizen of that country. Although he was willing to surrender his Egyptian passport, to comply with DoD policy (the Money Memorandum (GX 7)), he is unwilling to formally renounce his Egyptians citizenship. In an earlier statement to DSS (GX 2, dated March 2, 2004), Applicant stated he considered himself to be only a U.S. citizens, despite holding an Egyptian passport. In his hearing testimony on October 14, 2005, he stated that he does also consider himself to be an Egyptian citizen. He added that he was "going to surrender [his Egyptian] passport until [he] retired, and no longer needs a security clearance, at which time [he] will get a new one" (Tr at 45-47).

Applicant's intent was to be "very frank and straightforward, as honest as I can be, and I'm always being honest" (Tr at 47). Applicant claims an understanding of his obligations to protect U.S. security interests. He also has made himself familiar with the DoD security adjudication process.

Applicant's candor makes this an unusual case. After careful consideration, I conclude that Applicant is a highly intelligent, honest, trustworthy, man who says what he means and means what he says. Unfortunately, in the present case, he has raised more issues of concern than he has resolved. The most serious of these is that he is willing to surrender his Egyptian passport, but only in order to avoid the restrictions imposed by the Money memorandum. He specifically intends to keep his Egyptian citizenship, because he intends to spend more time there when he retires in about five years. He will then likely obtain a new Egyptian passport, because he will not need a security clearance (Tr at 45-48).

While his life and employment in the United States presents Applicant in a highly positive light, his recent words and conduct are problematic. Disqualifying Conditions (DC) (1) - the exercise of dual citizenship; and (2) the possession and use of a foreign passport are applicable. Mitigating Condition (MC (1)) - dual citizenship is based solely on parents' citizenship or birth in a foreign country - is applicable, but Applicant has exercised that foreign citizenship by obtaining a foreign passport. Applicant has precluded the applicability of the only other mitigating condition that might be applicable, since he has expressed an intent to retain, not renounce, his Egyptian citizenship.

In making my determination, I am required to apply the findings of fact to the Guidelines cited in the SOR. The record does not suggest any past improprieties and, despite Applicant's long and valuable service to the U.S. defense effort (AX A), he has placed himself beyond the bounds of the discretion I have under Directive 5220.6 and Executive Order 10865.

Guideline B - "The Concern: A security risk may exist when [members of] an individual's immediate family... are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."

Disqualifying Condition - (1) " an immediate family member.. . is a citizen of, or resident or present in, a foreign country." Mitigating Condition (MC) 1, "the immediate family members.., are not agents of a foreign power or are in a position to be exploited by a foreign power in a way that could force the individual to choose between his loyalty to the persons involved and the U.S." is applicable.

Despite Applicant's close ties with the U.S., he also retains close family ties in Egypt. The absence of problems in the past does not mean there will not be any in the future, but such absence must be taken into account with all other relevant evidence. There is no evidence suggesting that Applicant's family members are agents of a foreign government, but they might be pressured to ask Applicant to act improperly. That is a risk for anyone having family overseas. The more serious issue is how Applicant might react. Under our facts and circumstances, the potential vulnerability, i.e., that Applicant might feel forced to choose between countries, has not been mitigated by a record that indicates a less than unequivocal preference for the United States.

In context, Applicant's frequent travel to Egypt to visit his family does not, in itself, suggest that he somehow has a preference for Egypt or that he might be open to persuasion to act against U.S. interests. However, when considered along with all the other evidence of record, the extensive past, present, and likely future travel must be viewed with concern.

I have given careful consideration to all of the evidence showing Applicant's positive qualities, but he has not brought himself within the requirements of DoD 5220.6. Holding a security clearance is a privilege that must be earned, and not a right. It is axiomatic that any doubts must be construed against the granting or retention of a security clearance. In making the choices he announced at the hearing, he has created significant doubts about his security-related judgment, reliability, and trustworthiness, as those terms are used in the Directive, and all of which are required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) Against the Applicant

Subparagraph I.a. Against the Applicant

Subparagraph I .b. Against the Applicant

Subparagraph 1 .c. Against the Applicant

Guideline B (Foreign Influence) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE