



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
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 \_\_\_\_\_<sup>1</sup> ) ADP Case 06-24782  
 SSN: \_\_\_\_\_ )  
 )  
 Applicant for Public Trust Position )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro Se*

August 26, 2008

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**Decision**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

**STATEMENT OF THE CASE**

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Public Trust Position Application (SF 85P) on September 15, 2004. (Government Exhibit 1.) On November 15, 2007, DOHA issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make

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<sup>1</sup>It is noted that the Applicant's last name is misspelled on the Statement of Reasons. (Transcript at 51-52.)

the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR in writing on December 28, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 8, 2008. A notice of hearing was issued on May 9, 2008, scheduling the hearing for May 19, 2008. At the hearing the Government presented eight exhibits, which were admitted without objection. (Government Exhibits 1 through 8.) Government Exhibits 9 and 10 were marked for identification only. The Applicant presented one exhibit (Applicant's Exhibit A) and testified on her own behalf. The record remained open to allow the Applicant to submit additional documentation. She submitted a statement that was received on June 3, 2008. (Applicant's Exhibit B.) The official transcript (Tr.) was received on June 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive personal information is granted.

## **Procedural Ruling**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Arab Republic of Egypt and the Lebanese Republic. (Transcript at 23-36.) The requests and the attached documents were not admitted into evidence, but were included in the record as Government Exhibits 9 (I through IX) and 10 (I through XII) for Identification.<sup>2</sup> The facts administratively noticed are set out in the Findings of Fact, below.

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<sup>2</sup>The Government did not submit to the Applicant or to me a proposed administrative notice document entitled *CRS Report for Congress: Lebanon* (Congressional Research Service, Library of Congress, dated October 10, 2007.) Department Counsel requested that I not consider statements in Government Exhibit 9 for Identification that refer to this document. That request was granted. (Transcript at 31-33.)

## **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 57 years old and separated from her second husband. She is a Registered Nurse and is seeking to obtain a determination of trustworthiness in connection with her employment.

The Government opposes the Applicant's request for a determination of trustworthiness, on the basis of allegations set forth in the Statement of Reasons (SOR). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR:

### **Paragraph 1 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in a way that shows a preference for another country ahead of the United States.

### **Paragraph 2 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

The Applicant was born in Egypt in 1951. She moved to Kuwait, where she married a man from Lebanon. Her two children were both born in Kuwait, but are Lebanese, not Kuwaiti, citizens. She is divorced from this husband.

The Applicant and her two children immigrated to the United States in 1983. (Government Exhibit 8 at 6-10.) She became a naturalized American citizen in January 1996. (Government Exhibit 1, Section 3.). Both children are Permanent Resident Aliens in the United States (Government Exhibit 3 at 1, Exhibit 4 at 4, Exhibit 5 and Exhibit 6; Transcript at 62-67.) The Applicant does not believe herself to be a dual citizen of Egypt and the United States. (Transcript at 85.)

The Applicant had an active Egyptian passport that expired in 1999. (Government Exhibit 5.) The Applicant was unable to find this expired Egyptian passport after the hearing. (Applicant's Exhibit B.)

The Applicant also submitted her current American passport, which is valid from 1999 until 2009. (Government Exhibit 4.) This passport shows that it was properly used by the Applicant to travel to Egypt in 2006, containing a visa from the Egyptian government, as well as American and Egyptian entry and exit stamps. (Government

Exhibit 4 at 11; Transcript at 56-57.) Her American passport also showed entry and exit stamps from Egypt for trips in 2000 and 2001. (Government Exhibit 4 at 6-14; Transcript at 68-73, 84-85.)

The Applicant brought her expired Egyptian passport with her on her trips to Egypt for two reasons. First, Egyptian border authorities would identify the Applicant as being from Egypt because her American passport states her place of birth as Egypt. They would then ask the Applicant to show her expired Egyptian passport, even though she is an American citizen. (Government Exhibit 4 at 7; Transcript at 59.) Second, the Applicant received discounts in Egypt for lodging and visiting tourist sites by using her expired Egyptian passport to show that she was once Egyptian. Such discounts are not available to people born outside Egypt. (Transcript at 58-59.)

The Applicant has one surviving brother, who lives in Egypt and travels throughout the Middle East.<sup>3</sup> She sees him during her visits to Egypt, and contacts her brother about once a month. He has never travelled to the United States. (Transcript at 85-88.)

The Applicant's children are Lebanese in name only. The father of her children abandoned the Applicant and her young family soon after she arrived in the United States. (Transcript at 49-50.) Her 28 year old daughter last visited Lebanon over 25 years ago, when she was a very young child. Her son has never visited Lebanon. They have visited Egypt, but not recently. As stated above, both of the Applicant's children are Permanent Resident Aliens here in the United States. Neither child speaks any language but English and they are completely Americanized. (Transcript at 74-77, 89-92.) Under the particular facts of this case the relationship with Lebanon is so tenuous that it has no current security significance. Accordingly, subparagraphs 2.b. and 2.c. are found for the Applicant.

The Applicant has contacts with Egypt. Accordingly, it is appropriate to discuss the relationship between Egypt and the United States at this time.<sup>4</sup> Egypt has been an organized country for about 5,000 years. The Arab Republic of Egypt is the most populous country in the Arab world, with nearly 79 million people. Life expectancy is 71 years. It is a republic with a growing economy and a strong executive form of government. There is also an elected Parliament with some members appointed by the President of the Republic. It has an appointed judiciary. Egypt and the United States enjoy a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, strengthening trade relations, and promoting regional security.

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<sup>3</sup>SOR subparagraph 2.a. was amended to read, "Your brother is a citizen and resident of Egypt." This comports with the evidence. (Transcript at 61-62.)

<sup>4</sup>All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice. (Government Exhibit 9 for Identification and attachments.)

However, the terrorist threat remains high in Egypt despite its pursuit of terrorists. According to the 2007 National Counterintelligence Strategy of the United States, terrorists use overt, covert and clandestine activities to exploit and undermine U.S. national security interests.<sup>5</sup> Terrorist organizations currently target the United States for intelligence collection through human espionage and by other means. Egypt's human rights record is poor and serious abuses continue in many areas. Torture, arbitrary arrest, prolonged detention, poor prison conditions, denial of fair trial and lack of due process, executive branch limits on an independent judiciary, political prisoners and detainees, and restrictions on freedom of speech, press, assembly and association are some of the problem areas.

### **Paragraph 3 (Guideline E - Personal Conduct).**

The Government alleges that the Applicant is ineligible for a determination of trustworthiness because she has provided inconsistent information with regards to her son's citizenship and her last name.

As stated above, the Applicant's son was born in Kuwait, but is not a Kuwaiti citizen. U.S. Citizenship and Immigration Services, part of the Department of Homeland Security, accidentally identified the Applicant's son as being Kuwaiti on a single document. That is no fault of the Applicant, who has consistently stated and shown her son as being Lebanese.

There has been a lot of confusion concerning the Applicant's last name. (*See, for example*, caption to this SOR.) Since this decision is redacted, I can merely state that part of the name can be spelled with one or two "M"s. The Applicant got used to using two "M"s when writing her name, even though it "officially" only has one. Depending on the document, her last name may be spelled one way or the other, and often it is not her fault. Her current driver's license also uses the last name of her second husband, even though they are separated and she had her last name legally changed. That is because the Applicant did not bring a copy of the order changing her name to the Department of Motor Vehicles when her license was last renewed. (Transcript at 78-83.)

### **Mitigation**

The Applicant submitted letters of recommendation. They show that the Applicant is respected by her employers and members of the Armed Forces she works with. (Applicant's Exhibit A.)

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<sup>5</sup>Government Exhibit 9 for Identification at Attachment VI.

## Policies

When evaluating an Applicant's suitability for a trustworthiness determination, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to sensitive personal information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive personal information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to such information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive personal information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

## Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the finding of trustworthiness. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her access.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant may have had a valid Egyptian passport in the recent past (Guideline C); that the Applicant has a family member overseas (Guideline B); and that she has spelled her last name two different ways (Guideline E). The Applicant, on the other hand, has successfully mitigated the Government's case.

### Paragraph 1 (Guideline C - Foreign Preference)

Turning first to Guideline C, the Applicant has mitigated the Government's concerns about her possession of an expired Egyptian passport after becoming an American citizen. The concern is stated thus under this Guideline, *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.*

The Applicant had a valid Egyptian passport after becoming an American citizen. However, at all times relevant to this decision, the passport had expired and she did not use it for entry or exit from the United States. Disqualifying Condition 10(a)(1) states: *Conditions that could raise a security concern and may be disqualifying include: (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a **current** foreign passport.* (Emphasis supplied.) The Applicant's possession of an expired Egyptian passport does not come within the ambit of this Disqualifying Condition.

In addition, it is particularly noteworthy that when she traveled to Egypt the Applicant made a point of presenting her United States passport to Egyptian authorities to be stamped. Therefore, it cannot be said that the Applicant used her expired Egyptian passport in preference to her American passport. Such conduct also shows that she was not using the Egyptian passport to engage in unverifiable travel.

For all the reasons stated above, the Applicant has mitigated the concerns of Paragraph 1 of the SOR. Guideline C is found for the Applicant.

## Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows:

*Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.*

The Applicant has faint family connections to Egypt, specifically a single brother. Other than her children's citizenship, an accident of birth, she has no connections to Lebanon at all.<sup>6</sup> Her current family connections to Egypt, which consists of monthly telephone calls to her remaining brother, are tenuous at best. Her trips to Egypt are consistent with an American citizen visiting her other brother, who has passed away, during his illness.

All of these connections must also be viewed in the context of the Egyptian government, and in particular the current stance of the United States with regard to Egypt. Certainly, as shown by the Government, there have been concerns with Egypt in the past. However, as also abundantly shown by the same documents, the strategic stance between the United States and Egypt is one of strong friendship based on mutual interests in Middle East peace and stability. Applicant has limited contact with her remaining brother in Egypt. Her familial contacts are so infrequent that there is no risk in them for Applicant to be the object of foreign influence or exploitation by Egypt.

Based on the evidence the Government has presented, the following Disqualifying Condition arguably applies to this case: 7.(a) *Contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;* (b) *connections to a foreign person . . . that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information.*

The Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given her particular background:

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<sup>6</sup>As stated above, subparagraphs 2.b. and 2.c. are found for the Applicant.



*8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and (b) There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.*

In conclusion, I have carefully considered the information concerning the Egyptian government and its relations with the United States, provided by Department Counsel, and the extent of the Applicant's contacts with Egypt. After a review of all of the information, Paragraph 2 is found for the Applicant.

### **Paragraph 3 (Guideline E - Personal Conduct)**

The Federal Government, in a single form, confused the Applicant's son's place of birth (Kuwait) for his place of citizenship (Lebanon). It is certainly not the Applicant's fault that Citizenship and Immigration Services got that fact wrong. The Applicant has consistently told the Government the truth.

The Applicant spells her last name two different ways. Other entities, including DOHA, also spell her last name two different ways. While only one name, the one with one "M," is technically legal, this fact does not show an intent to deceive or a failure to cooperate. Her driver's license is in her married name. That is also not a sign that she is doing something illegal or improper.

Despite the Department Counsel's best efforts, and looked at in the manner most favorable for the Government, there is no proper allegation here of poor judgement, untrustworthiness or unreliability. Human beings, and not just the Applicant, make mistakes. That is all that has happened here. Guideline E is found for the Applicant.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about the importance of her family in the United States, and her pride in being an American citizen and working for the United States military. I find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole person standard, the Applicant has mitigated the security significance of her foreign connections and alleged foreign preference and is eligible for access to sensitive personal information.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a sensitive Systems Position. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline C:           FOR THE APPLICANT

Subparagraphs 1.a. through 1.c.:           For the Applicant.

Paragraph 2, Guideline B:           FOR THE APPLICANT

Subparagraphs 2.a. through 2.d.:           For the Applicant.

Paragraph 3, Guideline E:           FOR THE APPLICANT

Subparagraphs 3.a. through 3.c.:           For the Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

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WILFORD H. ROSS  
Administrative Judge