



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



In the matter of:)	
)	
)	ISCR Case No. 07-06016
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

May 19, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant was born in the United States to Egyptian parents. Her father is a professor at a Saudi Arabian university. She has relatives in Egypt. In 2000, she returned to the U.S. to attend a university. While at university, she traveled to visit her family during summer and winter school breaks. She has recently married a U.S. citizen and purchased a U.S. home. She has substantially more connections to the United States than to Egypt or Saudi Arabia.

I conclude Applicant has rebutted or mitigated the government’s security concerns under Guideline B, foreign influence. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order

and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on October 25, 2007, detailing security concerns under Foreign Influence.

On November 16, 2007, Applicant answered the SOR, and requested a hearing before an administrative judge. On January 25, 2008, I was assigned the case. On February 11, 2008, DOHA issued a notice of hearing scheduling the hearing held on February 21, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on her own behalf, as did two additional witnesses. Applicant submitted Exhibits A through D, which were admitted into evidence without objection. On March 7, 2008, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Notice

On February 11, 2008, Notice of Hearing was mailed out for the hearing set on February 21, 2008. At the hearing, Applicant was informed of her right under the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice and requested that the hearing proceed without delay. (Tr. 9)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Egypt and Saudi Arabia. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEx) E I–IX and SA 1–VI. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶ 1. of the SOR except for ¶ 1.b, which was denied because her sister was residing in Saudi Arabia not Egypt and ¶ 1.c, which was denied because it related to a sister and not to a brother.

Applicant is a 25-year-old software engineer / analyst who has worked for a defense contractor since May 2006, and is seeking to obtain a security clearance. Her job performance has been commendable to outstanding. (Ex. C and D) She is dependable, catches on quickly, has great tenacity, and is a valued team member. (Ex. D)

¹ 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In 1983, Applicant was born in the United States, while her father was obtaining his Ph.D. in chemistry at an American university. (Tr. 19) Her brother, who lives in the same area as she does, was born in Michigan, while her father was working on a post doctorate degree. (Tr. 21) Her brother, age 22, is currently a Ph.D. candidate having completed his undergraduate degree in pharmaceutical sciences. He lives on campus and on weekends, he spends time with Applicant. (Tr. 21, 33)

From 1986 to 1989, Applicant's family resided in Kuwait where another sister was born. This sister, who is an Egyptian citizen, attends the same school as Applicant's brother. Her sister is majoring in pharmaceutical sciences and hopes to obtain her Ph.D. (Tr. 21) Applicant sees her frequently.

Applicant's family resided in Kuwait until the first Gulf War when they came to South Carolina. (Tr. 19) Applicant attended first grade in Kuwait. (Tr. 40) She left Kuwait when she was seven or eight. (Tr. 40) In 1992, the family moved to Saudi Arabia when her father obtained a job as a professor at a university. Applicant's youngest sister, now age 13, was born while the family lived in Saudi Arabia. Her youngest sister has four or five years more before graduating from high school. (Tr.35-36) Her sister is very eager to move to the U.S.

Her parents have long term Saudi Arabian visas that allow them to reside and be employed in Saudi Arabia. Applicant's mother does not work outside of the home. When her father retires, her parents intend to move back to Egypt. Applicant has daily contact with her mother by email, telephone, and instant messaging. (Tr. 23) She has weekly contact with her father by instant messaging. (Ex. 2) Applicant's mother and younger sister visited her in the U.S. for a month, six weeks before the hearing. (Tr. 93)

Most of her parent's relatives live in Egypt. Applicant does not have contact with her father's side of the family. (Tr. 22) When in country, Applicant sees her grandmother on her father's side. (Tr. 37) Her mother has two brothers and two sisters who are citizens and residents of Egypt. Additionally, Applicant has eight cousins. (Tr. 37) Her uncles own an architectural consulting firm in Egypt. She talks with them five times a year by telephone. She is in communication with other relatives in Egypt on a weekly basis through instant messaging. Periodically, her uncles will call to check on her. (Tr. 23)

From September 1992 through July 2000, from age nine to seventeen, Applicant resided with her family at the university in Saudi Arabia. (Tr. 40) She attended English school where classes were taught in English. (Tr. 112) Up until the sixth grade, teaching was from American books. (Tr. 112) Starting in sixth grade, Arabic was taken as a second language and school classes were taught using British books. Applicant was taught the same information that children in the U.K. were taught. (Tr.113) Her exams were British exams.

In July 2000, Applicant returned to the U.S. to attend university where she obtained her bachelor's and master's degrees in electrical engineering. (Tr. 20, 44) Ever

since 1992, when her family left the U.S. to go to Saudi Arabia, Applicant had wanted to return to the U.S. (Tr. 44) Between September 2000 and December 2005, when Applicant was attending a U.S. university, Applicant visited her family in Saudi Arabia during the summer and during school break in December. (Tr. 23) All travel has been on her U.S. passport, which is the only passport she possesses. (Tr. 52)

Applicant was last in Saudi Arabia in 2006 when she spent three months, from December 2005 until March 2006, with her parents and sister. (Tr. 39, 42) The trips lasted a month or less. Now that she is no longer a student, she visits her family once a year, during the summer, when they are in Egypt. (Tr. 23) Applicant has no intention of visiting Saudi Arabia again. Any future trips to visit family will be to Egypt.

In July 2006, Applicant traveled to Egypt for three weeks to visit her uncles, aunt, and cousins. As a university professor, her father has breaks during the summer, which is when her parents and sister travel to Egypt. (Tr. 24) In 2006, she lived with her parents who have a residence in Cairo. From mid-June 2007 to mid-July 2007, Applicant last visited Egypt when she visited family and married.

In January 2008, Applicant filed for her parents to obtain green cards. Before applying for a green card for a parent an individual must be 21 years old and a \$2,500 fee per person must be submitted at the time of the application. (Tr. 32, 112) When Applicant turned 21 she and her brother were both in college and her parent's finances preventing the initiation of the process at that time. (Tr. 112)

Applicant has no financial or business interests in any foreign country. (Tr. 47) Applicant's only connection to Saudi Arabia is that her father works there. (Tr. 28)

Applicant met her husband when they were attending university. (Tr. 29) He grew up in Kansas and his family all lives in Kansas. His father is a doctor and his mother does not work outside the home. (Tr. 82) Her husband has his master's degree and is completing his Ph.D. (Tr. 48) They married in July 2007 in Egypt. In February 2007, she and her husband purchased their home for \$188,000. (Ex. A) She has \$8,188 in a 401(k) retirement account, \$7,000 in her checking account, and a substantial amount in her savings account. (Ex. B, Tr. 26, 47) She is a registered voter in the U.S. (Tr. 62) She intends to make the U.S. her permanent home. (Tr. 45)

Even though the government of Egypt treats children born to Egyptian father's as Egyptian, Applicant would have to apply for a visa if she stayed in Egypt more than six months. (Tr. 51) When she turned 21, she could have applied for Egyptian citizenship, but chose not to. (Tr. 51) Applicant would not want to live in Egypt permanently for it is too complicated and she certainly does not wish to live in Saudi Arabia. She enjoys her life in the U.S. more. (Tr. 59)

Egypt

I take administrative notice of the following facts. Egypt is a republic with a strong executive. The United States and Egypt enjoy a strong and friendly relationship based

on shared mutual interests in Middle East peace and stability, strengthening trade relations, and promoting regional security.² The threat of terrorism in Egypt remains high and transnational terrorist groups and local terrorist groups pose threats in Egypt despite Egypt's aggressive pursuit of terrorists and "Zero tolerance" policy on extremism.³ In 2003, Egypt discovered and disrupted a terrorist plot against U.S. interests.⁴ Between 2004 and 2006, Egypt suffered a series of deadly, coordinated terrorist bombings, which cause many deaths and hundreds of injuries, including U.S. citizens.⁵ "Although the Egyptian government took measures against the perpetrators of the 2004 and 2005 attacks, a 2006 bombing reflects a persistent, indigenous threat of terror activities."⁶

Terrorists use overt, covert, and clandestine activities to exploit and undermine U.S. national security interests. Terrorist organizations currently target the U.S. for intelligence collection through human espionage and other means.⁷ Terrorist groups conduct intelligence activities as effectively as state intelligence services.

The State Department notes the Egypt's human rights record is poor and serious abuses continue in many areas.⁸ Problems include: restriction of freedom of speech, press, assembly, and association, denial of fair trial, lack of due process, limitations on the right of citizens to change their government, arbitrary arrest, prolonged detention, poor prison conditions, political prisoners and detainees, torture, as well as executive branch limitation on an independent judiciary.⁹ Torture in Egyptian detention centers is pervasive.¹⁰

Opposition parties continue to lodge credible complaints about election manipulation by the government even though recent elections were more transparent

² U.S. Department of State, *Background Note: Egypt*, March 2007. (HEX E I at 9)

³ U.S. Department of State, *Background Note: Egypt*, March 2007. (HEX E I); U.S. Department of State, *Patterns of Global Terrorism* 2003, April 29, 2004 (HEX E IV); and U.S. Department of State, *Appendix B – Background Information of Designated Foreign Terrorist Organizations*, April 29, 2004 (HEX E V)

⁴ U.S. Department of State, *Patterns of Global Terrorism* 2003, April 29, 2004 (HEX E IV)

⁵ Department of State, *Country Reports on Terrorism, Chapter 2 – Country Reports: Middle East and North Africa Overview*, April 30, 2007. (EX E III)

⁶ *Id.* at 4.

⁷ *Statement for the Record by Michelle Van Cleave from the national Counterintelligence Executive*, Before the House Judiciary Subcommittee on Immigration, Border Security and Claims, Hearing on Sources and Methods of Foreign National Engaged in Economic and Military Espionage. (HEX E VII)

⁸ U.S. Department of State, *Country Reports on Human Rights Practices – 2006 – Egypt*, March 6, 2007. (HEX E IX)

⁹ *Id.*

¹⁰ U.S. Department of State, *Background Note: Egypt*, March 2007. (HEX E I at 5)

and better executed than in the past.¹¹ There remain significant restrictions on the political process and freedom of expression for non-governmental organizations.¹² The government of Egypt considers all children born to Egyptian fathers to be Egyptian citizens.¹³

Saudi Arabia

Saudi Arabia is a monarchy ruled by the Al Saud family. The central institution of the Saudi Arabian government is the monarchy.¹⁴ There are no political parties or national elections.¹⁵ There is no right to peaceful change of the government. The following human rights problems exist: significant restriction of civil liberties — freedoms of speech, press, assembly, association, and movement; arbitrary arrest and detention, sometimes incommunicado; infliction of severe pain by judicially sanctioned corporal punishment; beatings and other abuses; inadequate conditions at prison and detention centers; and arbitrary interference with privacy, family, home, and correspondence.¹⁶

There is a widespread perception of serious corruption and a lack of government transparency, as well as legal and societal discrimination and violence against women.¹⁷ Discrimination is faced by other religious, ethnic, and minority groups. There are strict limitations on workers rights, especially for foreign workers.

The religious police (*Mutawwa'in*) (MOI) harass, abuse, and detain citizens and foreigners.¹⁸ The government sentences criminals to punishments according to its interpretation of Shari'a (Islamic religious law). Corporal punishments provided by law include public executions by beheading, amputations, lashings, and other measures deemed appropriate by the judicial authorities. The Basic Law guarantees the inviolability of homes and the privacy of correspondence.¹⁹ However, custom officials routinely open mail searching for contraband.

¹¹ *Id.*

¹² *Id.*

¹³ U.S. Department of State, Consular Information Sheet – Egypt, June 20, 2007. (HEX E II)

¹⁴ U.S. Department of State, *Country Reports on Human Rights Practices 2006: Saudi Arabia*, March 6, 2007. (HEX SA I)

¹⁵ U.S. Department of State, Background Notes: *Saudi Arabia*, June, 2007. (HEX SA II)

¹⁶ U.S. Department of State, *Country Reports on Human Rights Practices 2006: Saudi Arabia*, March 6, 2007. (HEX SA I)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

The U.S. and Saudi Arabia share a common concern about regional security, oil exports, and sustainable development. Following September 11, 2001, relations between Saudi Arabia and the U.S. have been strained. Fifteen of the suicide bombers in the terrorist attacks were Saudi citizens. In May 2003, suicide bombers killed 35 people, including nine Americans, in attacks in the capital. In November 2003, a terrorist attack on a housing compound left 18 dead and more than 100 injured. In June 2004, terrorists killed three Americans. In December 2004, terrorist attacks on the U.S. Consulate killed five.

The Department of State has issued a travel warning for Saudi Arabia due to concerns about possible terrorist activity directed at American citizens and U.S. interests.²⁰ Terrorists continue to target housing compounds and other establishments where westerners may be located.

The Saudi government has moved to monitor and enforce its anti-money laundering and terrorist finance laws, regulations, and guidelines.²¹ The Saudi government has permitted or encouraged fund-raising in Saudi Arabia by charitable Islamic groups and foundations linked to Al-Qaeda.²² Saudi Arabia has been unwilling to publically disseminate statistics regarding money laundering prosecutions. Saudi Arabia recognizes the Palestine Liberation Organization (PLO) as the legitimate representative of the Palestine people.²³

Policies

When evaluating an Applicant's suitability for a security clearance, 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 classified 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to

²⁰ U.S. Department of State, *Travel Warning : Saudi Arabia*, December 19, 2007. (HEX SA III)

²¹ Department of State, *Country Reports on Terrorism, Chapter 2 – Country Reports: Middle East and North Africa Overview*, April 30, 2007. (HEX SA VI)

²² Congressional Research Service, Library of Congress, *Saudi Arabia: Current Issues and U.S. Relations*, August 2, 2006. (HEX SA IV)

²³ *Id.*

classified information will be resolved in favor of national security.” 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 security decision.

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

Under AG ¶ 6, 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.

I have considered all of the Foreign Influence disqualifying conditions. Conditions that could raise a security concern and may be disqualifying are listed under AG ¶ 7. AG ¶ 7(a) “contact with a foreign family member, business or professional associate, friend, or other person 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.” and AG ¶ 7(b) “connections to a foreign person, group, government, or country 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, group, or country by providing that information,” apply.

Applicant’s parents are Egyptian citizens. Applicant’s father is a professor teaching at a Saudi Arabian university. Her mother does not work outside the home. Applicant’s younger sister, age 13, lives with her parents. Applicant has frequent contact with her mother. While attending university in the United States, Applicant visited her parents during summer and winter breaks from classes. Traveling home during school breaks is what students do. All travel was on her U.S. passport, which is the only passport she possesses. Applicant’s loyalty is to the U.S. rather than Saudi Arabia or Egypt and her only connection with the country is her father’s teaching position there.

AG ¶ 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 AG ¶ 8(b) “there is no conflict of interest, either because the individual’s sense of loyalty or obligations 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,” apply to Applicant’s parents and foreign relatives.

Applicant’s brother and sister attend university in the U.S., a short distance from where Applicant lives with her husband. She sees them frequently. Her brother was born in Michigan and her sister was born in Kuwait. Applicant’s younger sister is most anxious to come to the U.S. and will do so when she finishes high school. Applicant has recently started the process of obtaining green cards for her parents. Applicant was unable to initiate the process before turning 21 and the financial aspect of paying the application fee prevented earlier action.

Applicant has relatives in Egypt with whom she has regular contact. In 2007, when she married a U.S. citizen, the marriage took place in Egypt. Applicant’s uncles run an architectural design business and, as uncles are want to do, maintain regular contact with Applicant to check up on her. The contact with her mother and her mother’s relatives in Egypt is frequent. Her contact with her father’s relatives in Egypt is not. While danger certainly exists for all who reside in Egypt, Applicant, her parents, and relatives are in no greater danger than any other individual living and working there.

Applicant has no desire to live permanently in Egypt. She enjoys her life in the U.S. more. If she stays in Egypt for more than six months she must apply for a visa. When she turned 21, she could have applied for Egyptian citizenship, but chose not to. She has made her chose to make her life with her new husband in the U.S. They have purchased a home together and all her finances are in the U.S.

There is little likelihood Applicant has any conflict of interest, but if she did it is clear, due to her loyalty to the U.S. and the likely minimal possibility of the conflict; she would resolve it in favor of the U.S.

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 totality of Applicant's family ties to Egypt and her parents living in Saudi Arabia and the heavy burden an Applicant carries when she has family members in a foreign country. As indicated in the statement of facts, there are many other countervailing, positive attributes to Applicant's life as a U.S. citizen that weigh towards granting a clearance. Applicant has close ties to the United States. Her closest family member is her husband, a U.S. citizen born and raised in the U.S., who lives with her. Additionally, her brother and sister are nearby, attending a U.S. university. Because her husband and siblings live in the United States, they are not vulnerable to coercion or exploitation by a foreign power, except possibly indirectly through relatives, who still live in Egypt or Saudi Arabia.

Applicant was born in the United States, spent her formative years living abroad attending British schools, and returned to the U.S. to attend university. She has lived in the U.S. since 2000. Applicant and her husband purchased a home in February 2007. Although her parents live in Saudi Arabia and she has relatives living in Egypt and she has frequent telephone and electronic contact with them, she has no desire to ever live permanently in either country. She may visit relatives in Egypt in the future, but her trips will never be as frequent as when she was a college student visiting her parents during summer and winter breaks from classes. Her marriage to a U.S. citizen reinforces the decision that her life is now in the U.S.

The "whole person" analysis in a Guideline B case should include "the totality of an applicant's conduct and circumstance[s] (including the realistic potential for

exploitation).” Applicant’s potential for exploitation is low. I base this finding on her credible and sincere testimony, and I do not believe she would compromise national security, or otherwise comply with any threats or pressure emanating from Saudi Arabia or Egypt. Although there is a significant risk of terrorism in both countries she has such deep loyalties to the U.S. and U.S. family members, she would resolve those pressures in favor of the U.S. interest. See AG ¶ 8(b). After weighing the disqualifying and mitigating conditions, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

 Subparagraph 1.a-i: For Applicant

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge