



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-06364
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Candace Le'i , Esquire, Department Counsel
For Applicant: *Pro Se*

January 31, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 27, 2005. On August 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C, B, and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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.

Applicant replied to the SOR (RSOR) in writing on September 4, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on October 18, 2007. DOHA issued a notice of hearing on November 13, 2007, and I convened the hearing as scheduled on December 19, 2007, in Santa Barbara, California. The government offered Exhibits (Ex.) 1 through 4, which were received and admitted. Applicant testified on his own behalf and submitted Exhibits A through H.

Exhibits G and H, after objection, were not admitted. DOHA received the transcript of the hearing (Tr.) on January 10, 2008. I granted Applicant's request to keep the record open until January 4, 2008, to submit an additional document. On January 2, 2008, he submitted Exhibit I, without objection, and the record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Egypt. The request and the attached documents were admitted into evidence as Exhibit 4. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated August 27, 2007, Applicant admitted all of the factual allegations in the SOR with the exception of 1.c. and 3.a. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 48 years old and was born in Egypt in 1959. He moved to the United States in 1984 to pursue a higher education. He became a naturalized United States citizen in 1999. Applicant received two Masters degrees from United States universities. He is married to a Canadian citizen, and he has no children.

Applicant was employed by a defense contractor, and he seeks a DoD security clearance in connection with his potential future employment in the defense sector.

Guideline C, Foreign Preference

1.a. The SOR alleges that Applicant exercised dual citizenship with Egypt and the United States. The basis of this allegation includes the following subparagraphs 1.b. through 1.e., under Guideline C.

1.b. Applicant applied for and was issued an Egyptian passport in June 1999, and he renewed it in October 2005, even though he had become a United States citizen in April 1999, and received a United States passport in May 1999. Applicant testified that he kept and renewed his Egyptian passport to use it as an identification form. He also uses it to enter Egypt since he believes it is safer than using any other passport.

1.c. When Applicant was interviewed by a Government investigator on July 18, 2006, he possessed a valid Egyptian passport that is not scheduled to expire until 2012,

and he indicated that he was unwilling to relinquish this passport. At the hearing Applicant testified that he is willing to relinquish this passport to the proper Egyptian authorities, but he is not willing to renounce his Egyptian citizenship. The record was held open to allow Applicant to return his Egyptian passport to Egyptian authorities. Rather than do that, he did submit a post hearing document (Exhibit I) showing a copy of his Egyptian passport with one corner cut off. He indicated in an accompanying letter that he did not submit it to the Egyptian authorities, as he still hopes to be able to use it as an Egyptian identification.

1.d. Applicant maintains his Egyptian citizenship and passport because he maintains a condominium and bank account in Egypt, as discussed in 2.b., and 2.c., below. At the hearing, Applicant conceded that he could not own the condominium or the bank account in Egypt if he were not an Egyptian citizen. Currently his mother and aunt live in the condominium, and when he visits Egypt, Applicant stays there as well.

1.e. Applicant used his Egyptian passport rather than his United States passport to enter and exit Egypt in June 1999 and November 2005. When he entered Egypt in 1999 and 2005, he only identified himself as an Egyptian citizen, not as a dual citizen or United States citizen.

Guideline B, Foreign Influence

2.a. Applicant's mother and sister are citizens and residents of Egypt. His mother, who is 75, has been retired from the Egyptian Department of Welfare since 1992, and she now receives a pension from the Egyptian Government. His sister had been a school teacher, but she is not currently working. He speaks to his mother by telephone, once a week, and to his sister once every two or three months. Applicant also has four aunts who live in Egypt. None of them have worked for the Egyptian Government. He testified that he has no relatives other than his wife who live in the United States.

2.b. Applicant owns a condominium in Egypt worth approximately \$170,000. He inherited that from his father.

2.c. Applicant maintains a bank account in Egypt with a balance of the equivalent of approximately \$100,000. He also inherited the money from his father.

2.d. Applicant traveled to Egypt in June 1999 and November 2005. Applicant intends to visit Egypt again in the not too distant future, but he does not have any set plans at this time. He did testify that he wants to see his mother before she dies.

Guideline E, Personal Conduct

3.a. Applicant executed a Security Clearance application (SCA) on October 27, 2005. Question #17 asked, "Do you have any foreign property, business connections or financial interests?" Applicant answered "No" to this question. He should have identified his condominium and bank account in Egypt, as set forth in 2.b. and 2.c., above. At the

hearing, Applicant testified that the condominium and the money were not placed in his name until after he completed the SCA, so at the time he executed the SCA, his answer that he did not own any property or other financial interests in another country were correct. He also stated that he believed the question was asking about a business interest in another country, which Applicant did not have.

In response to questioning, Applicant indicated that he owns no property in the United States, and he has approximately \$20,000 in U.S. assets.

I take administrative notice of the following facts regarding Egypt. The Arab Republic of Egypt is the most populous country in the Arab world. It is a republic with a developing economy and a strong executive. The United States and Egypt enjoy a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, strengthening trade relations, and promoting regional security. However, despite Egypt's aggressive pursuit of terrorists and its zero tolerance policy on extremism, the threat of terrorism in Egypt remains high and transnational and local terrorist groups continue to pose a threat to Egypt, and these terrorist groups conduct intelligence activities. Finally, Egypt's human rights record is poor and serious abuses continue in many areas.

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 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

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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.”

Applicant’s retention of his Egyptian passport raises foreign preference concerns. Disqualifying condition DC 10 (a), the exercise of the privilege of foreign citizenship applies because (1) Applicant retained his Egyptian passport, which he used on the two occasions to enter and exit Egypt, after he became a United States citizen. DC (e) also applies as Applicant used his Egyptian citizenship to protect his ownership rights to the condominium and the bank account in Egypt, which he could not have owned if he were not an Egyptian citizen.

While Applicant did cut a small piece off of his Egyptian passport, I find that he can not be considered to have ultimately revoked, destroyed, or invalidated his foreign passport. Since he was unwilling to renounce his Egyptian citizenship, and he never notified the Egyptian authorities to revoke his passport, there is nothing to prevent him from immediately reapplying and getting a new Egyptian passport. Therefore, I find that no mitigating condition (MC) under this guideline applies to this case. After considering all of the evidence of record on Guideline C, I conclude that the disqualifying evidence substantially outweighs the mitigating evidence.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's relatives are citizens of Egypt, which could create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet her burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

In reviewing the Disqualifying Conditions (DC) I find that DC 7. (a) applies, contact with foreign family members, who are citizens and residents in a foreign country, if that contact creates heightened risk of foreign exploitation, pressure or coercion. Applicant is particularly close to his mother, whom he speaks to every week. DC (e) also applies because of Applicant's ownership of a condominium in Egypt valued at \$170,000, and his Egyptian bank account worth \$100,000. Based on his limited resources in the United States, his Egyptian holdings must be considered substantial and could subject Applicant to heightened risk of foreign influence or exploitation.

I have determined that based on his extremely close relationship with his mother and his substantial financial holdings in Egypt that under Guideline B, no MC applies in this case.

Accordingly, I find Guideline B against Applicant.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

With respect to Guideline E, the evidence establishes that Applicant did not identify his ownership of the condominium or the bank account in Egypt when he completed the SCA in October 2005. However, I find that Applicant's contention that at the time he completed the SCA neither of these items was legally owned by him. Therefore Applicant response was correct, and Applicant did not intend to mislead the Government.

In reviewing the DCs under Guideline E, I conclude that no DC applies against Applicant.

I therefore, resolve Guideline E for 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. Based on all of the reasons cited above, regarding Applicant's Egyptian citizenship and passport, his mother in Egypt and his significant assets in Egypt, I also find that the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant has not mitigated the 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 C:	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
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge