



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



In the matter of:)
)
) ISCR No. 08-07093
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

July 29, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

HISTORY OF CASE

On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence), Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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.

On February 23, 2009, Applicant answered the SOR in writing and requested a hearing before an administrative judge. DOHA assigned the case to me on April 15, 2009, and issued a Notice of Hearing on May 11, 2009. I convened the hearing as scheduled on June 11, 2009. Department counsel offered Government Exhibits (GE) 1 through 6 into evidence, which were admitted without objection. Applicant testified. He did not offer any exhibits into evidence. DOHA received the transcript of the hearing (Tr.) on May 27, 2008.

PROCEDURAL RULINGS

Administrative Notice

Department counsel requested administrative notice of certain facts relating to Egypt. (Tr. 19) The request and the attached documents are included in the record as Administrative Hearing Exhibits (AHE) I through VII. Applicant did not object to consideration of those Exhibits. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

In his Answer, Applicant admitted all factual allegations contained in Paragraphs 1 through 3 of the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 43 years old. He was born in Egypt and attended grammar and high school there. In 1992, he earned a bachelor's degree in English literature from an Egyptian university. In 1993, he met his wife, a U.S. citizen, in Italy. In early 1994, he came to the United States and married in May 1994. They have two teenage children, both born and residing in the United States. In June 1999, he became a U.S. citizen. In March 2003, he and his wife divorced. They subsequently engaged in a custody law suit.

After moving to the United States in 1994, Applicant worked for various private companies. From 1994 to March 2000, he was a machinist for his mother-in-law's company; from March 2000 to October 2002, he was a sales and marketing manager. He then returned to Egypt for seven months to live. After coming back to the United States, he worked as a limousine driver from April 2003 to March 2004. (GE 1) Subsequently, he started his own company as a commercial driver. (Tr. 26, 33)

Applicant's parents were born in Egypt. They are both deceased. He is one of four children, all born in Egypt. He has three sisters who are citizens and residents of Egypt. All three are married. One sister is a housewife; one sister is a teacher in a Christian school; and one sister is an architect engineer for a private company. None of his sisters or their husbands are affiliated with the Egyptian government. (Tr. 37) He has

unsuccessfully tried to help two sisters move to the United States. One of them has a five-year visa for the United States and had lived here for a period of time. The third sister has applied for a Canadian visa. He acknowledged that he has an extended family and friends living in Egypt. (Tr. 38) He maintains contact with his family and friends in Egypt.

Applicant traveled to Egypt in July 1999, January 2001, November 2001, January 2002, July 2002, and March 2005. In 1999, he and his family moved there in an effort to preserve his marriage, which had begun to deteriorate. His wife taught English at an American school while there. He and his wife subsequently left and returned to the United States. In 2001, he made trips to Egypt because his parents were ill. His mother died in November 2001. Between July 2002 and March 2003, he stayed in Egypt because his father was very sick. (Tr. 51) While living in Egypt, his wife filed for divorce in the United States. After learning that, he became romantically involved with a young woman, whom he married and then divorced after two weeks in order to avoid a scandal. (Tr. 52)

In 1999, Applicant shipped two cars from the United States to Egypt because he thought he and his wife were going to live there. In 2002, he shipped another car. At the time he shipped the cars, he had an Egyptian passport that allowed him to import the cars without paying custom taxes. Eventually, he sold the cars and deposited the proceeds into an Egyptian bank account. He believes he has about \$17,500 in the account. He has not transferred that money to a U.S. bank because he does not want his former wife to gain access to it. He wants it to remain available for emergencies. (Tr. 61) He does not have any other assets in Egypt. (GE 5)

Applicant received his first U.S. passport in June 1999, after becoming a naturalized citizen. He also had an Egyptian passport until 2005 when he surrendered it to the company that is sponsoring him for a security clearance. It was then destroyed. He used both passports, depending on which one made travel easier for him. (GE 2 at 9; GE 5).

After September 11, 2001, Applicant decided to help the United States in its war on terror. In 2004, he applied for an interpreter position with a federal contractor. In pursuit of that position, he completed four security clearance applications: one in March 2004, one in April 2007, one in October 2007, and one in December 2008.

In response to *Question 27, Your Use of Illegal Drugs and Drug Activities-Illegal Use of Drugs* on the March 2004 application, Applicant denied that he illegally used drugs. (GE 4) In his three subsequent applications, he disclosed that he used marijuana once or twice daily from 2001 to February 2004. In his Answer, he admitted that he deliberately lied when he completed the March 2004 application because he wanted his "application to look good." (Tr. 68)

In further explaining the falsification, Applicant asserted that he was a different person in March 2004 and that he has changed his life since then. At that time he was

in debt, used marijuana, and did not have a career, family, or home. He was in “the middle of a tornado.” (Tr. 70) Today, he has a good relationship with his children, has paid several debts, and has a career as a professional driver. (Tr. 72-73) He stated that he stopped using marijuana in February 2004. (Tr. 71) He has been dating an American woman for several years with whom he lives.

Applicant admitted that he failed to disclose that he lived in Egypt from July 2002 and March 2003 in response to *Section 8. Where You Have Lived* on the March 2004 application. He said that it was “101 percent a naïve mistake.” (Tr. 63) At the time he completed the form, he was unaware of the importance of being completely accurate in his answers because he did not know the significance of a security clearance. (Tr. 65) He did not disclose the information in the April 2007 application. (GE 3) In the October 2007 application, he disclosed that he lived in Egypt from January 2002 to April 2002. (GE 2) He did not disclose the information in the December 2008 application. (GE 1) Sometime during the investigation, he informed the Government that he traveled to Egypt between July 2002 and March 2003. (GE 5)

Applicant acknowledged that he owes two law firms a total of \$15,000 for legal fees attributable to his divorce. In May and June of this year, he made \$50 payments to each firm for a total of \$200. (Tr. 74-77) He intends to continue making those monthly payments until the delinquent debts are paid. All of his other debts are paid. (Tr. 74) Currently, he earns approximately \$50,000 annually through his business and hopes to earn \$100,000 in the future. (Tr. 73, 81)

Applicant asserted his pride of U.S. citizenship. “I am very proud of being American.” (Tr. 82)

Egypt

Egypt is a populous republic with a developing economy. It has close relations with the United States and shares a mutual interest in Middle East peace and stability. It receives a substantial amount of U.S. foreign aid. Egypt’s human rights record is poor and serious abuses continue to occur. Despite aggressive governmental action against terrorists, the threat of terrorism in Egypt remains high. Terrorists in Egypt target U.S. interests to exploit and undermine U.S. national security interests. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 an 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

ANALYSIS

Guideline B, Foreign Influence

The security concern relating to the Government's concern about foreign influence is set out in 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.

AG ¶ 7 describes three conditions that could raise a security concern and may be disqualifying in this case:

(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;”¹

(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; and

(e) substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk or foreign influence or exploitation.

Applicant maintains contact with his three sisters and their families who are resident citizens of Egypt. Although Egypt has a close relationship with the United States, it continues to have human rights issues and has been victimized by terrorist attacks. This fact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion, and a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence. Applicant also maintains a bank account there, raising a concern under AG ¶ 7(e).

After the Government produced substantial evidence of those disqualifications, the burden shifted to the Applicant to produce evidence and prove mitigation of the resulting security concerns. Four Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions:

¹ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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.;

(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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's siblings do not work for the Egyptian government or other companies or institutions that would have interest in acquiring protected information. Only their physical presence in Egypt creates a potential that their well-being could be threatened to the point that Applicant would confront a choice between their interests and those of the United States. Based on Egypt's relationship with the United States and his siblings' professions, I find it unlikely that Applicant will be placed in a position of having to choose between the interests of the Egyptian government and those of the United States, if and when he obtains a position as an interpreter in another country. AG ¶ 8(a) has some application.

Applicant produced some evidence establishing the limited application of AG ¶ 8(b). He has strong connections and feelings for the United States where he and his children reside. He has been a naturalized citizen since 1999. He has an American girlfriend with whom he lives. He has worked in the United States since 1994 and now owns his own business. Those facts tend to indicate that he can be expected to resolve any conflict of interest in favor of the United States.

AG ¶ 8(c) does not apply because Applicant's communication and relationships with his siblings are more than casual and not infrequent. Since leaving Egypt in 1994, he has returned to see his family in 1999, in 2002, and 2005. From July 2002 to March 2003, he lived there. These visits, along with his attempts to obtain U.S. citizenship for two sisters and his ongoing communication with them, demonstrate his deep connections to his family.

Applicant intends to maintain his \$17,500 Egyptian bank account because he does not want his former wife to have access to it and needs it for any emergencies. Given his reliance on that account, AG ¶ 8(f) cannot apply.

Guideline E, Personal Conduct

The Government's security concern pertaining to personal conduct is set out in AG ¶ 15:

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.

One Personal Conduct Disqualifying Condition is particularly relevant and potentially disqualifying in this case. AG ¶ 16(a) provides that the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" may raise a security concern. Applicant incorrectly answered two questions on the March 2004 security clearance application. He denied that he intentionally falsified his answer to one question and admitted that he deliberately lied in the other.

SOR ¶ 2.a alleges that Applicant falsified his March 2004 security clearance application because he did not disclose that he resided in Egypt from July 2002 to March. Applicant admitted the omission and asserted he made a mistake when he completed the application. After listening to him and observing his demeanor, I believe that the omission was an oversight. Hence, this allegation is found in his favor.

SOR ¶ 2.b alleges that Applicant deliberately falsified his initial March 2004 security clearance application because he did not disclose that he used marijuana on a daily basis between January 2001 and February 2004, approximately one month before he completed the application. Applicant admitted that he lied. Hence, the disqualifying condition set forth in AG ¶ 16(a) is raised.

AG ¶ 17 includes six conditions that could mitigate the security concern arising under this guideline. I have considered four of them:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant disclosed his marijuana use in the April 2007 security clearance, approximately three years after he completed his initial application. It is not clear when he voluntarily disclosed it or whether it was prior to April 2007. Hence, there is insufficient evidence to support the application of AG ¶ 17(a) as to the allegation in SOR ¶ 2.b. The offense was not so minor as to be mitigated by the passage of five years. Neither AG ¶ 17(c) or AG ¶ 7(d) have application. Applicant produced evidence that he has taken steps to reduce his vulnerability to duress based on his subsequent disclosure of his former drug use. AG ¶ 7(e) has some application.

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant admitted that he has a \$15,000 delinquent debt that dates back to 2003-2004 and relates to his divorce. The evidence raised the above disqualifications.

AG ¶ 20 provides six conditions that could mitigate security concerns. I considered three of them:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The delinquent debt relates to legal fees Applicant incurred during his 2003 divorce. That situation was beyond his control. However, there is no evidence that he took responsible action to resolve the debt until April 2009. Hence, AG ¶ 20 (b) does not have full application. Other than his testimony, Applicant did not present evidence that he received any financial counseling or that his financial situation is under control. Although he submitted evidence that within the past two months he paid \$100 to each law firm and that he intends to continue making payments in the future, he did not provide a written agreement confirming that arrangement. There is insufficient evidence to apply either AG ¶ 20(c) or AG ¶ 20(d).

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 (APF) listed at AG ¶ 2(a): They are as follows:

(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) the 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."

According to 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.

In Foreign Influence cases, the Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

Some mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature educated person, who came to the United States in 1994 to marry his wife and start a family. Both of his children were born in the United States and reside here. He has a strong sense of patriotism toward the United States. He surrendered his Egyptian passport in 2005, when he learned that it posed an obstacle to obtaining a security clearance. There is no evidence he has ever taken any action that could cause potential harm to the United States.

Several circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and various human rights abuses in Egypt. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant’s siblings to obtain such information. Second, he had numerous connections to Egypt before he permanently immigrated to the United States in 1994, including his education and numerous family members and friends, who continue to reside there. Third, his three sisters are resident citizens of Egypt with whom he maintains (admirably) close contact. Fourth, he has a financial interest in a bank account there that he wants to save for emergencies. Fifth, since becoming a U. S. citizen in June 1999, he made seven trips to Egypt, the last being in 2005. During one of those trips, he remained seven months and married a woman, whom he shortly thereafter divorced. Sixth, he relied on his dual citizenship in 1999 and 2002 to import cars and circumvent custom taxes. His ties to Egypt are not insignificant.

In addition to those facts, I also considered Applicant’s decision to falsify his March 2004 security application regarding his three years of illegal marijuana use. Although he repeatedly asserted that he has changed his life since 2004 and that he would never falsify information requested from the Government again, he did not sufficiently demonstrate a pattern of exercising good judgment or document a track record of financial responsibility at this time. After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, and listening to Applicant testify, I have serious concerns about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under foreign influence, personal conduct, and financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge