



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03694
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

August 18, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On September 11, 2008, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86).¹ On an unspecified date in 2009, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories. He responded to the interrogatories on June 25, 2009.² On October 8, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining*

¹ Government Exhibit 1 (SF 86), dated September 11, 2008.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated June 25, 2009).

Eligibility For Access to Classified Information (effective within the Department of Defense on September 1, 2006) (AG). The SOR alleged security concerns under Guideline B (Foreign Influence), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on October 15, 2009. In a sworn, written statement, dated November 2, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 25, 2010, and the case was assigned to me on March 8, 2010. A Notice of Hearing was issued on March 18, 2010, and I convened the hearing, as scheduled, on April 21, 2010.

During the hearing, two Government exhibits and nine Applicant exhibits were received without objection. Applicant and one other witness testified on his behalf. The transcript of the hearing (Tr.) was received on May 4, 2010.

Rulings on Procedure

At the commencement of the hearing, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Arab Republic of Egypt (Egypt), appearing in a written submission of the request. The original request was received on February 25, 2010, and included five documents.³ On April 13, 2010, an amended request was received, and included six documents, some of which were updated versions of the earlier submission.⁴ The original request was withdrawn, but some of the attached documents were transferred over to the amended request.⁵ Facts are proper for administrative notice when they are verifiable by an authorized source and relevant and material to the case. In this instance, the source information relied upon by the Government was publications of the Department of State⁶ and the Congressional Research Service.⁷

³ Motion for Administrative Notice, dated February 25, 2010.

⁴ Amended Motion for Administrative Notice, dated April 13, 2010.

⁵ Tr. at 12-15.

⁶ U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Egypt*, dated March 2010; U.S. Department of State, *Egypt Country Specific Information*, dated March 9, 2010; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports: Middle East and North Africa Overview*, dated April 30, 2009; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Terrorist Organizations*, dated April 30, 2009; and U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Human Rights Report: Egypt*, dated March 11, 2010.

⁷ Congressional Research Service, Library of Congress, *Egypt: Background and U.S. Relations*, dated May 12, 2009.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, I take administrative notice that the facts and events described in the documents occurred.⁸ Pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Egypt subsection.

During the proceeding, Department Counsel also moved to amend the SOR to conform to the expected evidence. Specifically, she sought to amend subparagraph 1.d. thereof by deleting the year “2001” and substituting therefore the year “2000.” There being no objection by Applicant, the motion was granted and the SOR was amended as described above.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.d. of the SOR. Those admissions are incorporated herein as findings of fact.

Applicant is a 45-year-old employee of a defense contractor, and he is seeking to obtain a TOP SECRET security clearance. He had previously been granted a SECRET security clearance in June 2003.⁹ Since December 2002, he has been employed by various employers, including federal contractors, in a variety of positions, including systems engineer, linguist, and senior analyst.¹⁰ In November 2009, the federal contractor, for whom Applicant was working since September 2007, lost the contract and he and other employees on the contract were switched over to another federal contractor.¹¹ Applicant’s colleagues and supervisors, both current and past, all support his application and characterize him in a very positive light, using terms such as: trustworthy, diligent, reliable, honest, loyal, professional, dedicated, dependable, and having integrity.¹²

Applicant was born in Egypt in 1965,¹³ and resided there with his parents and two brothers, all of whom are Egyptian citizens.¹⁴ He attended an Egyptian university and, in 1988, he received a B.A. in Accounting.¹⁵ Immediately upon graduation, because of disagreements with his father, and with the hope of furthering his education,

⁸ Tr. at 16.

⁹ Government Exhibit 1, *supra* note 1, at 38.

¹⁰ *Id.* at 12-18.

¹¹ Tr. at 83.

¹² See Applicant Exhibits A through C (Character References, various dates); Tr. at 115-122.

¹³ Government Exhibit 1, *supra* note 1, at 6.

¹⁴ *Id.* at 25-26, 28-29.

¹⁵ *Id.* at 12.

Applicant immigrated to the United States where he obtained a U.S. Permanent Residence Card or “green card.”¹⁶ He joined a friend who had left Egypt two years earlier, and to save money for college, for seven or eight months, he worked on a farm picking fruits and vegetables.¹⁷ He subsequently worked as a cashier for a gasoline station for about a year, and then for five or six years with a bank.¹⁸ In 1990, he enrolled in some classes at a local college for 18 months.¹⁹ After attending another university from 1997 to 2001, Applicant was awarded a B.S. in Computer Information Systems.²⁰

In July 1995, Applicant enlisted in the U.S. Navy.²¹ Upon completion of his required active service, in July 1999, Applicant was released from active duty and given an honorable discharge.²² During his period of active duty, he was awarded the Good Conduct Medal, two Armed Forces Expeditionary Medals, two Sea Service Deployment Ribbons, a Meritorious Unit Commendation, Battle Efficiency Award, and the National Defense Service Medal.²³

After active duty, Applicant entered the Naval Reserve where he remained until 2002.²⁴ In September 2001, in response to the terrorist attack in the United States earlier that month, he was mobilized for 13 months.²⁵ He was awarded the Joint Service Achievement Medal for his meritorious service.²⁶ In November 2002, he was transferred to the Army National Guard for one year and was subsequently honorably discharged in November 2003.²⁷ In about 2008, Applicant re-enlisted in the Naval Reserve,²⁸ and his unit is scheduled to be deployed to Afghanistan in March 2011.²⁹

¹⁶ Tr. at 70-71, 84-85.

¹⁷ *Id.* at 71-74.

¹⁸ *Id.* at 74-76.

¹⁹ *Id.* at 76, 91.

²⁰ Government Exhibit 1, *supra* note 1, at 11.

²¹ Applicant Exhibit F (Certificate of Release or Discharge from Active Duty (DD Form 214), dated July 5, 1999.

²² *Id.*

²³ *Id.*

²⁴ Tr. at 94.

²⁵ *Id.*

²⁶ Applicant Exhibit H (Citation, undated).

²⁷ Applicant Exhibit G (Report of Separation and Record of Service (National Guard Bureau Form 22), dated November 7, 2003.

²⁸ Tr. at 104.

²⁹ *Id.* at 107.

Applicant had intended to apply for U.S. citizenship in 1994, but at the time, he was on a U.S. Navy cruise, so his actual application was delayed.³⁰ He became a U.S. citizen in September 1997.³¹ At that time, and on several occasions thereafter, he took an oath of allegiance to the United States.³² In 2007, Applicant married a Venezuelan-born naturalized U.S. citizen,³³ and he and his wife have a son born in the United States in 2007.³⁴ He also has another son born in the United States in 2002, from an earlier relationship.³⁵

Applicant's parents were both born and raised in Egypt.³⁶ Both are in their mid-70s.³⁷ His father was a clerk for a government ministry for over 20 years, and then ran his own family real estate business for several years before retiring due to poor health.³⁸ Because he resigned from his government position before the required age of retirement, he is not eligible for a government pension.³⁹ His current health is not very good.⁴⁰ Applicant's mother was a teacher for another government ministry for over 20 years, but she retired with a pension some time ago.⁴¹ Neither parent is aware of what Applicant's job is or what he does.⁴² They still reside in Egypt.

Applicant has two younger brothers, both of whom were also born in Egypt.⁴³ The older brother is a college graduate who has worked for an American company in Kuwait since 2000.⁴⁴ He is married to an Egyptian school teacher and they have two children.⁴⁵ His younger brother, also a college graduate, is a lawyer who was unable to find employment as a lawyer. When he was not unemployed, as he was for a

³⁰ *Id.* at 84.

³¹ Government Exhibit 1, *supra* note 1, at 8.

³² Tr. at 104.

³³ Government Exhibit 1, *supra* note 1, at 22-23.

³⁴ *Id.* at 26.

³⁵ *Id.* at 27; Tr. at 97.

³⁶ *Id.* at 25-26.

³⁷ *Id.*

³⁸ Tr. at 58-59, 100-101.

³⁹ *Id.* at 59.

⁴⁰ *Id.* at 101.

⁴¹ *Id.* at 66.

⁴² *Id.* at 101.

⁴³ Government Exhibit 1, *supra* note 1, at 28-29.

⁴⁴ Tr. at 55-56.

⁴⁵ *Id.* at 56-57.

substantial period, he worked first as a salesman for a private company, and briefly as an auditor with a government office.⁴⁶ He is now working for the family real estate business.⁴⁷

None of Applicant's parents or siblings has ever been to the United States.⁴⁸ Nevertheless, in 2003, Applicant applied for immigrant visas for the entire family.⁴⁹ He follows up on the visa status periodically, and was informed in January 2010, that it should be approved in seven months.⁵⁰

Applicant does not consider himself a dual citizen of Egypt and the United States. Instead, he recognizes only his U.S. citizenship.⁵¹ When he took his oath of citizenship in 1997, he renounced allegiance to any foreign government.⁵² If his impression regarding dual citizenship is proven to be erroneous, he would willingly renounce any Egyptian citizenship he might still have.⁵³ He obtained his first U.S. passport in 1998, and renewed it in 2002.⁵⁴ He has not possessed an Egyptian passport since it expired in 1990,⁵⁵ and no longer possesses any documents from the Egyptian Government.⁵⁶ In the event of hostilities between the United States and Egypt, his loyalties would lie with the United States.⁵⁷

While Applicant's wife owns a residence in a distant state in the United States, the family actually resides in a rented residence across the country, closer to where he works.⁵⁸ She stays home with their child, and is working on her nursing degree.⁵⁹ He owns two automobiles, has two U.S. bank accounts, CDs, and two 401(k) retirement

⁴⁶ *Id.* at 60-64.

⁴⁷ *Id.* at 64.

⁴⁸ *Id.* at 51.

⁴⁹ *Id.* at 52.

⁵⁰ *Id.* at 53.

⁵¹ *Id.* at 105, 110.

⁵² *Id.* at 114.

⁵³ *Id.* at 110-111.

⁵⁴ Applicant Exhibit D (U.S. Passport, issued July 5, 2002); Applicant Exhibit E (U.S. Passport, issued March 25, 1998).

⁵⁵ Tr. at 108, 113.

⁵⁶ *Id.* at 105-106.

⁵⁷ *Id.* at 105.

⁵⁸ *Id.* at 88, 98-99.

⁵⁹ *Id.* at 99.

accounts.⁶⁰ He does not own any property or have any assets outside of the United States.⁶¹

In December 2000, after nearly 12 years without seeing his family, Applicant returned to Egypt for a four-week visit.⁶² He stayed in his parents' home during the entire period.⁶³ While there, he spent three weeks working on a school project and studying.⁶⁴ He used his U.S. passport during the trip, and had no contact with Egyptian authorities.⁶⁵ In 2002, he was deployed for one month to the Middle East as part of a U.S. Central Command antiterrorism vulnerability assessment in Egypt.⁶⁶ It is unclear if he had the opportunity to visit with his family. In August 2005, upon receiving a telephone call from his brother that their father had been hospitalized in critical condition. Applicant travelled to Egypt where the entire family spent nearly two weeks with his father in the hospital.⁶⁷ He used his U.S. passport during the trip, and had no contact with Egyptian authorities.⁶⁸ In August 2007, Applicant's father had a relapse and, once again, was hospitalized in critical condition.⁶⁹ Applicant travelled to Egypt to be with his parents and the one brother who could be at the hospital.⁷⁰ He used his U.S. passport during the trip, and except for an unexplained two-hour delay when the authorities took his passport upon entering Egypt, he had no further contact with Egyptian authorities.⁷¹

Except for the few trips back to Egypt, Applicant has not seen his family members since he arrived in the United States in 1988. He periodically speaks to his parents by telephone, and even less frequently, he speaks or exchanges e-mails with his brothers.⁷² He has no intention of ever returning to Egypt except for his parents' emergencies.⁷³

⁶⁰ *Id.* at 88.

⁶¹ *Id.* at 89.

⁶² *Id.* at 34.

⁶³ *Id.* at 35.

⁶⁴ *Id.* at 35-37.

⁶⁵ *Id.* at 37-38.

⁶⁶ Applicant Exhibit H, *supra* note 26; Tr. at 43-44.

⁶⁷ Tr. at 39-40.

⁶⁸ *Id.* at 40-41.

⁶⁹ *Id.* at 41-42.

⁷⁰ *Id.* at 42.

⁷¹ *Id.* at 41-43, 46.

⁷² Government Exhibit 2 (Personal Subject Interview, dated October 29, 2008), at 1.

⁷³ Applicant's Answer to the SOR, dated November 2, 2009, at 1.

Egypt

Egypt is the most populous country in the Arab world and the second-most populous on the African continent. It is a republic with a strong executive and a developing economy. Egypt's judicial system is based on European, primarily French, legal concepts and methods, and under Egypt's current president, the courts have demonstrated increasing independence, and the principles of due process and judicial review have gained greater respect. Egypt is an important and strategic partner of the United States. The two countries enjoy a vibrant and friendly, though sometimes strained, relationship based on shared mutual interest in Middle East peace and stability, revitalizing the Egyptian economy, strengthening trade relations, and promoting regional security. Egypt is a key partner in the search for peace in the Middle East and resolution of the Israeli-Palestinian conflict. Egypt played a key role during the 1990-1991 Gulf crisis. Egypt helped assemble the international coalition and deployed 35,000 Egyptian troops against Iraq to liberate Kuwait. The Egyptian contingent was the third-largest in the coalition forces, after the United States and United Kingdom. The United States and Egypt participate in combined military exercises, including deployments of U.S. troops to Egypt. Every other year, Egypt hosts Operation Bright Star, a multilateral military exercise with the United States. It is the largest military exercise in the region.

President Anwar el-Sadat introduced greater political freedom and a new economic policy, relaxing government controls over the economy and encouraging private, including foreign, investment. Liberalization also included the reinstatement of due process and the legal banning of torture. In 1978, the Camp David accords were signed by Egypt and Israel, and in 1979, the Egypt-Israel peace treaty was signed. In October 1981, Islamic extremists assassinated President Sadat, and Hosni Mubarak, the Vice President since 1975, was elected President. He was subsequently confirmed by popular referendum for additional 6-year terms.

Following the September 11, 2001, terrorist attacks on the United States, Egypt, which has itself been the target of terrorist attacks, has been a key supporter of U.S. efforts against terrorists and terrorist organizations. Despite governmental action against terrorists, the threat of terrorism in Egypt remains high. Major terrorist attacks where foreigners, including Americans, have been killed have occurred most recently in 2005, 2006, 2008, and 2009. The Egyptian judicial system does not allow plea bargaining, and terrorists have historically been prosecuted to the full extent of the law, in either military tribunals or emergency courts.

The United States designated Hamas and Hezbollah foreign terrorist organizations in 1997. Hamas' control of the Gaza Strip poses a challenge for Egypt, which wants to keep Hamas isolated, but also seeks to minimize the public and regional Arab backlash it may receive for doing so. The secular Egyptian regime is opposed to Islamists wielding real political power, for it fears an Iranian-style revolution in Egypt. In April 2009, the Egyptian government uncovered a large Hezbollah cell clandestinely operating in Egypt. Prior to September 11, 2001, Hezbollah was responsible for more American deaths than any other terrorist group, and has bombed embassies and

military barracks, hijacked civilian airliners, and kidnapped or murdered innocent civilians.

The U.S. State Department notes that Egypt's human rights record is poor and serious abuses continue in many areas, including: limitations on the right of citizens to change their government; the state of emergency that has been in place almost continuously since 1967; unwarranted lethal force and torture; arbitrary arrest; prolonged detention; poor conditions in prisons; executive branch limits on an independent judiciary; political prisoners and detainees; and restrictions on freedom of press, assembly, association, religion, and Internet freedom. The prison system, particularly detention facilities used for incarcerating suspected Islamist radicals, has come under increasing international scrutiny.

Egypt considers all children born to Egyptian fathers to be Egyptian citizens even if they were not issued an Egyptian birth certificate or a passport.

There is no evidence to indicate that Egypt is an active collector of U.S. economic intelligence and proprietary information, or that Egypt uses coercive measures to gain access to such information.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."⁷⁴ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁷⁵

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. The entire process is a conscientious scrutiny of a number of

⁷⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁷⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁷⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁷⁷

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁷⁸

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁷⁹ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

⁷⁶ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁷⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷⁸ *Egan*, 484 U.S. at 531

⁷⁹ See Exec. Or. 10865 § 7.

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for 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.

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.⁸⁰

The guideline notes several conditions that could raise security concerns. Under 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” is potentially disqualifying. Similarly, under 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” may raise security concerns. AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his family members who are Egyptian citizen-residents or Egyptian citizen-Kuwait-residents to determine the degree of “heightened risk” or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where “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,

⁸⁰ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

organization, or government and the interests of the U.S.” Similarly, AG ¶ 8(b) may apply where the evidence shows “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.” Also, AG ¶ 8(c) may apply where “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.”

Applicant’s relationship with his various family members is diverse. Those who are Egyptian citizen-residents, his mother, father, and one brother, require the most scrutiny. His relationship with his entire family, for the most part, was essentially by periodic long distance telephone contact from 1988, when he departed Egypt, until 2000, when he returned for a visit. Thereafter, were it not for medical emergencies occasioned by his father’s hospitalizations in 2005 and 2007, the long distance telephone relationship would have remained unchanged. His relationship with his one brother who is in Kuwait working for a U.S. company is even more distant. While there were periodic telephone calls or exchanges of e-mails between them, Applicant has not seen this particular brother since 2005, as he could not meet with Applicant in 2007. Applicant has no intention of ever returning to Egypt except for his parents’ emergencies, and did not return for other family activities, such as his brother’s wedding.

Despite the nature and infrequency of the respective relationships, those relationships remain rather close and caring. Applicant previously applied for immigrant visas for the entire family, and was informed in January 2010, that it should be approved in seven months. However, at the time the record closed, the approval was still being awaited.

Applicant’s relationship with his spouse, a naturalized U.S. citizen-U.S. resident, is obviously much closer. She does not hold a job outside the family home, but is a fulltime homemaker working on her nursing degree, raising their child.

In assessing whether there is a heightened risk because of an applicant’s relatives or associates residing in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant’s conduct and circumstances, and the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁸¹ In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”⁸² Nevertheless, the

⁸¹ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

⁸² ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States through the Applicant. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

The Government has argued that the presence of terrorists operating within Egypt's borders heightens the risk for Applicant's family members residing in Egypt. In such a situation, Egypt and all its citizens become the victims of terrorism. Of course, terrorists also operate within the borders of the United States, reducing the persuasiveness of this argument. In fact, Egypt has targeted Islamist radicals in attempts to disrupt their activities and return life in Egypt to normalcy, just as U.S. law enforcement strives to protect U.S. citizens from terrorists.

As noted above, the United States and Egypt have a history of friendly relations making it less likely that the Egyptian government would attempt coercive means to obtain sensitive information. If such a heightened risk were to be present, it would, in all probability, come from the Islamist radicals rather than from Egyptian government sources. However, it does not eliminate the possibility that a foreign power would employ some non-coercive measures in an attempt to exploit his relatives. While Applicant has three family members still residing in Egypt, as well as one residing in Kuwait, there may be speculation as to "some risk" at the hands of terrorists, but that speculation, in the abstract, does not, without substantially more, establish evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion against Applicant's relatively low profile family members.

There is a very low potential of forcing Applicant to choose between the interests of the United States and those of either Egypt or those family members. He has already served in the Middle East and is scheduled to deploy to Afghanistan in March 2011. As a general rule, an applicant's prior history of complying with security procedures and regulations is considered, by the Appeal Board, to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances.⁸³ However, the Appeal Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security.⁸⁴ The presence of such circumstances can give

⁸³ See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006).

⁸⁴ See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006); ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006); ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008).

credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report attempts at coercion or exploitation.⁸⁵

In 2002, Applicant coordinated a rather large number of antiterrorism vulnerability assessments of military sites and diplomatic missions throughout U.S. Central Command's area of responsibility. His ability to speak multiple languages was a critical asset during the largest antiterrorism vulnerability assessment in Egypt, where he served as the primary conduit for the team chief providing clear communication between the team chief and host nation officials.⁸⁶ Applicant's overall military service demonstrates that Applicant has been willing to assume a high level of risk on behalf of the United States, and they constitute important evidence that Applicant's ties and sense of obligation to the United States could be sufficiently strong that he "[could] be expected to resolve any conflict of interest in favor of the U.S. . . ."⁸⁷ He has met his burden of showing there is little likelihood that those relationships could create a risk for foreign influence or exploitation. AG ¶¶ 8(a) and 8(c) fully apply. AG ¶ 8(b) partially applies.

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) 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.

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. Applicant has resided in the United

⁸⁵ *Id.*

⁸⁶ Applicant Exhibit H, *supra* note 26.

⁸⁷ AG ¶ 8(b); See ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006.) (Applicant's work as an interpreter in Afghanistan occurred "in the context of dangerous, high-risk circumstances in which [he] made a significant contribution to the national security.") See also ISCR Case No. 04-12363 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 (App. Bd. Feb. 5, 2008).

States since 1988, and became a U.S. citizen in 1997. He married in the United States, and his closest family members are his wife and two children, all of whom reside in the United States. As such, they are not vulnerable to direct coercion or exploitation, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is low. As noted above, in 2002, Applicant was deployed for one month to the Middle East as part of a U.S. Central Command antiterrorism vulnerability assessment in Egypt. He was awarded the Joint Service Achievement Medal for his meritorious service during that deployment.

Applicant's relationship with his parents and one brother who are Egyptian citizen-residents, as well as the one brother who is an Egyptian citizen and Kuwait-resident, is varied. Some are historically limited to rare visits with periodic telephone contacts, and some are generally limited to infrequent telephone or e-mail contacts.

Egypt is not believed to be an active collector of U.S. economic, intelligence, or proprietary information, and there is no evidence that Egypt uses coercive measures to gain access to such information. Instead, Egypt is an important U.S. ally in the war on terror and the maintenance of stability in the Middle East. While there may be some international concern regarding human rights in Egypt, especially related to the prison system's detention facilities that may be used for incarcerating suspected Islamist radicals, there is no evidence that the issue involves non-Islamist radical-individuals simply because of their relationship with U.S. citizens. It is very unlikely Egypt would forcefully attempt to coerce Applicant through his relatives still residing in Egypt. The presence of family members in Egypt without any affiliation or relationship to the government of Egypt, other than past employment in various offices not related to intelligence, military, or internal security, does not generate a realistic potential for exploitation.

Like the United States, Egypt has been the target of terrorist attacks. But it remains a key supporter of U.S. efforts against terrorists and terrorist organizations. Nevertheless, despite governmental action against terrorists, the threat of terrorism, primarily against foreign interests, remains high. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the foreign influence security concerns. (See AG ¶¶ 2(a)(1) through 2(a)(9).)

Overall, 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 security concerns arising from his foreign influence 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:

For Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 1.c:

For Applicant

Subparagraph 1.d:

For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge