DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[redacted]	)	ISCR Case No. 09-02708
SSN [redacted]	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: [redacted],[1] Esquire

April 22, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate security concerns arising from his falsification of security clearance applications and his contacts with relatives in Egypt. He mitigated the financial considerations and outside activities security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted three security clearance applications, the last one on June 1, 2006. On June 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the

[1] Certain portions of the published decision have been redacted for privacy considerations.

adjudicative guidelines (AG) effective within the Defense Department (DOD) on September 1, 2006.

The SOR alleges security concerns under Guideline E (Personal Conduct), Guideline F (Financial Considerations), Guideline B (Foreign Influence), and Guideline L (Outside Activities). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

On July 14 and 20, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 28, 2009. Applicant's attorney entered his appearance on September 8, 2009. On September 9, 2009, I granted Applicant a delay to accommodate his attorney's schedule, and allow additional time for Applicant to receive the investigative file, which apparently he requested on August 31, 2009.[2] DOHA issued a notice of hearing on November 3, 2009. The hearing was convened as scheduled on November 25, 2009. The Government offered Government Exhibits (GE) 1 through 15, which were admitted over Applicant's objections.[3] Applicant testified and submitted Applicant Exhibits (AE) 1 through 7. AE 1 - 6, were admitted without objection. AE 7 was received on December 28, 2009, and admitted over the Government's objections. DOHA received the transcript of the hearing (Tr.) on December 9, 2009. The record was closed on December 28, 2009.

[2] Defense Security Service (DSS) documents indicate Applicant submitted a Privacy Act request on October 2, 2009. DSS provided a response on October 9, 2009, and a supplemental response on November 25, 2009 (AE 7, Tab A). Applicant also received documents in response to a Freedom of Information Act request on February 24, 2009 (Tr. 66). On September 9, 2009, Applicant submitted a FOIA request to the U.S. Office of Personnel Management (OPM). That same month, OPM informed Applicant that it did not have any records under his name and identifying information (AE 5).

[3] In general, Applicant's objections were based on: lack of relevance, lack of foundation and authentication, incomplete documents, hearsay, and that some documents contained private information (Tr. 36-66). After weighing Applicant's objections, I admitted all the documents in an effort to develop a full and complete record. I considered Applicant's objections in deciding what weight, if any, to give to the evidence in light of the record as a whole.

I admitted and considered GE 8 with its two enclosures. The document is a business record prepared, transmitted, and kept in the regular practice of government agencies adjudicating security clearances and protecting classified information. The document was not prepared "with a view towards litigation." In direct examination - before the document was admitted as evidence - Applicant's attorney made reference to and asked questions based on information favorable to Applicant contained in GE 8 and its enclosures. (Applicant assisted law enforcement on a large U.S. passport fraud investigation and relayed other valuable information (Tr. 195-196)). Most of the information in GE 8 is consistent with government exhibits, Applicant's testimony, and his hearing and post-hearing exhibits. In direct and during cross-examination, Applicant denied and clarified the contents of GE 8 that he believed were not accurate.

Procedural Issue

At Applicants' request, and with the Government's acquiescence, I conducted a joint hearing. The same attorney represented both Applicant and his spouse (ISCR Case No. 08-06925).

Administrative Notice

Department Counsel requested I take administrative notice of certain facts relating to Egypt. The request and the attached documents were marked and included in the record as Government Exhibit (GE) 16 for identification. Applicant objected to my consideration of GE 16. The documents were not admitted, but were considered for administrative notice purposes only.

Findings of Fact

Applicant admitted and denied, in part, SOR ¶¶ 1.a and 3.c. He admitted SOR ¶¶ 3.a, 3.b, 3.f, 3.k - 3.m, and 4.c, with explanations. He denied all remaining allegations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 58-year-old Arabic linguist employed by a defense contractor. He was born, raised, and educated in the Arab Republic of Egypt (Egypt), where he received a law degree and a police science and law enforcement administration degree. He is licensed to practice law in Egypt, but he never practiced law in Egypt. He worked for the Egyptian government from 1974 until 1984. In 1974, at age 24, he was commissioned as a police officer (special agent) in one of the Egyptian ministries. In 1979, he travelled to a North American country as a member of an Egyptian delegation to a non-alignment conference. He testified he was only a bodyguard for an important Egyptian dignitary.

Applicant was promoted through the ranks and became a senior level officer with supervisory duties (equivalent to a colonel). He was in charge of a section conducting state security investigations, anti-terrorism, and counter-intelligence. He testified some of his training was taught by U.S. personnel. Applicant was promoted to a general director position working with armament and operations. In that capacity, he supervised and handled security operations in government raids and supervised the security plans and operations for government institutions (Tr. 252-253, 269-272). While in these positions, Applicant possessed a high-level Egyptian security clearance (Tr. 254).

At his hearing, Applicant claimed he no longer has any contact with the Egyptian government or with friends that worked with him in the security services of the Egyptian government (Tr. 193). He claimed that since immigrating, he only has had infrequent contact with Egyptian government personnel while they participated in training at a U.S. university. Approximately four times between 1996 and 2003, a U.S. university invited

Applicant to assist the university hosting Egyptian government personnel receiving training at the university (Tr. 252-255). Also, during his visits to Egypt, Applicant briefly met with some of his old Egyptian security service friends while passing through the airport.[4] Applicant denied that he maintains contact with some of the key directors of the Egyptian security services,[5] as indicated in GE 8.

Applicant first travelled to the United States in 1979. He and his family stayed with his Egyptian-born uncle for approximately one year. His uncle is a 76-year-old professor at a U.S. university. Before immigrating to the United States, his uncle was a member of an Arab terrorist organization. He was granted asylum in 1963, became a naturalized U.S. citizen, and has been living in the United States since. He has two U.S. born adult children: one is a professor at a U.S. university and the other a physician (Tr. 105-106).

Applicant knew of his uncle's association with the terrorist organization since Applicant was a young man (Tr. 193). He disclosed his uncle's affiliation during a background interview (Tr. 193). To Applicant's knowledge, his uncle is no longer associated with any terrorist organizations.[6] At his hearing, Applicant claimed he no longer affiliates with his uncle. Applicant's wife testified she and Applicant now hate his uncle because he is a womanizer and left his wife. Applicant and his wife testified they have never been involved in politics or associated with any terrorist organizations.

Applicant married his wife in 1977 in Egypt; they immigrated to the United States in 1984. Applicant and his wife became naturalized U.S. citizens in 1993. They have three adult children who are citizens and residents of the United States. Two of the children were born in Egypt and became naturalized U.S. citizens in 1994. The third child was born in the United States. Applicant's wife was a homemaker from 1977 until 2007. In May 2007, she started working as an Arabic linguist with a government contractor.

Applicant's parents are deceased. He has three siblings, two brothers and one sister who are citizens and residents of Egypt (Answers to the SOR). His sister was a professor at an Egyptian university. She is now a homemaker. She is married to an Egyptian who is the chief engineer for a large U.S. corporation doing business in Egypt. Because of his job, they are planning to move to the United States in the near future.

[4] On his three security clearance applications (answers to questions about his foreign activities and contacts with a foreign government), Applicant indicated that from 1992 to present (2006), he "met with previous colleagues while visiting or in official training in the US. While visiting Egypt on some occasions he met with colleagues who work in governmental positions. The nature of the communications is that "with old friends. This is not a contact with a government or in any government capacity." (GEs 2, 5, and 7)

[5] Applicant's testimony is contrary to his 2005 summarized background interview (GE 8). The agent recorded that Applicant was maintaining contact with "key directors within the Egyptian security services."

[6] Applicant's testimony is inconsistent with his 2005 summarized background interview (GE 8).

Applicant testified that he is not close to his siblings and has infrequent contact with them. His contacts are limited to infrequent telephone calls and email exchanges during holidays or special occasions. He averred that his siblings are pro-American and have never been involved with politics or worked for the Egyptian government. One of his brothers worked as the [redacted].[7] The other was the "former [redacted] in Egypt. As of November 2004, he was the partner and director of an international relations company (AE 4). Applicant had a third brother who was killed by sniper fire while in a [redacted]. At the time, he was the [redacted]" (AE 4).

Applicant's aunt, one of his wife's sisters and her husband, and one of their three children are citizens and residents of Egypt. His aunt lives in an Egyptian apartment rented by Applicant since 1996. He testified his aunt pays for the rent – approximately $8 monthly. He denied providing any financial support for his aunt. He explained that she is old, sick, and has no children. He rented the apartment for her because she was afraid that being an old woman, she would be evicted unless she has the protection of a man.[8]

In his 2003 and 2004 security clearance applications, Applicant was asked to disclose whether he had any foreign property, business connections, or financial interests. He failed to disclose that he was renting an apartment in Egypt. Although he was leasing the apartment, he did not consider it to be his property or his financial interest in Egypt, because he was leasing the apartment for his elderly aunt. Emails between Applicant and company personnel assisting him with completion of his 2003 application show he disclosed the apartment on his emails.

Applicant's wife has three sisters. Sister 1 is a citizen and resident of Egypt. His wife is very close to Sister 1. Prior to 2006, they had personal contact every year or every two years. Since 2006, they have telephone contact approximately twice a month (Tr. 123-124). Sister 1 has three children; two of them are U.S. citizens. The third child is applying for a green card. Sister 1 and her husband have not worked for the Egyptian government and have not been involved in politics, or associated with organizations adverse to the United States. Her husband owns a construction company which he is selling to immigrate to the United States. Applicant's wife applied for Sister 1's U.S. residency in November 1996, and it has been approved. The whole family is immigrating to the United States in the near future. Her other two sisters are naturalized U.S. citizens and residents.

[7] Applicant's November 2004 email indicates his brother was the [redacted] Egypt" (AE 4).

[8] Applicant's testimony appears to be contrary to his 2005 summarized background interview (GE 8). During the interview he stated that he and his wife were renting an apartment in Egypt.

Applicant's wife and her siblings inherited a home and three acres of land in Egypt when their father died in 1999. She claimed she sold her interest in the home to one of her sisters. The land has been in her family since the 1800s, and they have title to the land. She and her sisters share a 2/3 interest in the land. She claimed they have not been able to sell it because over 17 of her relatives live on it. She claimed the land is still in his father's name. She intends to renounce her interest in the land. She presented no documentary evidence to support her claims or to establish the value of the land and home she inherited.[9]

Applicant's wife travelled to Egypt with her children in 1997, 1999, 2000, 2002, and 2003. She took her children sightseeing in Egypt and to visit with relatives. While in Egypt, they stayed with her sister. Applicant accompanied them in one of the trips, but she cannot recall which trip (Tr. 133). She repeatedly stated she considers the United States her country and reaffirmed her loyalty to the United States. The United States is the country where she and her husband chose to live and raise their children. Her family never worked for the Egyptian government. She testified her family in Egypt is composed of mostly wealthy investors, who never had a need to work for the government (Tr. 135).

In his 2003 and 2004 security clearance applications, Applicant was asked to disclose all foreign countries he had visited during the seven years preceding his applications. He disclosed he travelled to Egypt in December 1994. However, he failed to disclose that he travelled to Egypt on three other occasions: in April 2000, to visit his mother who was terminally ill; in August 2000, to bury his mother; and in May 2002, to renounce his mother's inheritance.[10] His last visit to Egypt was in 2007, for personal medical reasons. He denied any of these visits were business related (Tr. 192).

Applicant testified his failure to disclose his travels to Egypt was not intentional, and that he never intended to falsify his application or mislead the government. He had problems with the electronic security clearance application program. The file was corrupted, his disclosed information did not print, and the program did not allow him to correct his entries (Tr. 182, 246). Applicant's 2003-2004 emails with company personnel assisting him completing his applications show he was having some problems completing them. Notwithstanding, the emails also show he was specifically asked about his travel to Egypt after 1994. In his response, Applicant commented on his 1994 trip, but failed to provide any information about his 2000 and 2002 trips to Egypt. Applicant deliberately omitted his travel to Egypt in 2000 and 2002.[11] He provided the omitted travel information to a background investigator during a follow-up interview, as

[9] This remains a concern in light of her testimony that her family in Egypt is composed of mostly wealthy investors who never had a need to work for the government (Tr. 135).

[10] In a 2005 background interview, Applicant indicated he was in the process of inheriting around $50,000-$60,000 from his mother's estate (GE 8). Applicant provided no documentary evidence to show he renounced his mother's estate.

[11] *See* AE 4, emails dated October 27, 2004, at 7:57 PM; and November 3, 2004, at 5:51 PM.

well as a copy of his passport reflecting his omitted travel. He averred these actions show he had no intention to hide or mislead the government.

Applicant was admitted to the practice of law in a U.S. state in 1992. Shortly thereafter, he established his own law firm and practiced law until 2003. While practicing law in the United States, Applicant advertised he was licensed to practice law in Egypt, that his law firm was dedicated to the practice of law in Egypt, and that he was certified by the Egyptian government as an international arbitrator (Tr. 200, GEs 9 and 12). At his hearing, Applicant denied he ever practiced law in Egypt. He claimed he only provided advice and translated documents (Tr. 210). During cross examination, he stated he stopped representing clients in Egypt in 2004 (Tr. 267). On December 12, 1994, Applicant travelled to Egypt to represent a U.S. client in a monetary claim (AE 4).

In his answers to the SOR, Applicant denied that from approximately 1996-1998 to 2003, he had business interests with or provided legal advice to his former law professor (HA), and to his brother-in-law (AE), both citizens and residents of Egypt. In his answers to question 12 of his 2003, 2004, and 2006 security clearance applications (asking whether he had any foreign property, business connections, of financial interests), Applicant disclosed that from 1998 to present he had a legal business cooperation agreement with his former law professor, and that he had a "corresponding office, telephone, and fax" with his brother-in-law. He further disclosed that from 2001 to present, he was certified by the Egyptian government as an international arbitrator. However, he never had a client in his capacity as international arbitrator (Tr. 205).

Applicant testified he and his law professor are only acquaintances, and that they have not talked to each other since 2005, when Applicant moved to his current state of residence. Applicant met the professor as a law student and had contact with him while living in Egypt. He had no contact with the law professor from 1984 until 1994. In 1994, Applicant travelled to Egypt to represent a U.S. client, and he met with the professor. Thereafter, they had contact approximately every two years. He provided legal advice to his law professor in 1996-1997. Later during the hearing, he qualified his testimony saying that they only "spoke about legal issues" (Tr. 201).

Applicant represented his nephew and his brother-in-law in a wrongful damages lawsuit on behalf of his nephew. His nephew was born in the United States. Because of his nephew's lack of legal capacity, his brother-in-law signed the representation documents and managed the lawsuit on behalf of his son (Tr. 204).

In his answers to question 13 of his 2003, 2004, and 2006 security clearance applications (asking whether he had ever been employed by, or acted as a consultant for a foreign government, firm, or agency), Applicant disclosed that from 1992 to present he provided free consultation to Egyptian consulate personnel in the United States concerning U.S. legal matters. He also provided comments for publication on international legal issues to a Middle Eastern country newspaper. In his answer to the SOR and at his hearing, Applicant stated he never provided legal advice to the Egyptian consulate itself. He only advised Egyptian consulate personnel on their personal legal

issues. He represented an Egyptian embassy attaché in a lawsuit, other embassy personnel on contract litigation, and provided consultation on domestic matters. He stopped providing legal advice to Egyptian consulate personnel in January 2005 (Tr. 206, 265). He denied having a long-time association with a woman assigned to an Egyptian consulate in the United States.

In the mid-1990s, Applicant was involved in two complex class action litigation cases in two different federal courts. As a result of his repeated professional misconduct in the handling of the two cases, he was sanctioned over six times for violating court orders, filing frivolous actions, and lying to the court. His sanctions exceeded $40,000, and he was disqualified from the practice of law in a federal court.

In May 1999, Applicant's state professional disciplinary board filed formal charges against him for his violation of numerous rules of professional conduct in the litigation of the two above mentioned cases (GE 3). The substantiated behavior included: lack of competence, misleading the courts with non-meritorious claims and contentions, lack of candor toward the tribunal (made false statements under oath), obstructing litigation, conduct intended to disrupt a tribunal, and conduct prejudicial to the administration of justice. In September 2004, Applicant's state disciplinary board sanctioned him and suspended him from the practice of law for three years (one year of the suspension was deferred) (GE 4). In January 2005, Applicant's state Supreme Court affirmed the disciplinary board's decision. At his hearing, Applicant admitted he was sanctioned both by the federal courts and by his state Supreme Court, but repeatedly denied any wrongdoing. He claimed there were other attorneys that were sanctioned, but he was singled out with the harshest punishment.

In sanctioning Applicant, the state disciplinary board noted he had no prior disciplinary record, was inexperienced in the practice of law, provided full disclosure to the board, cooperated in the proceedings, and demonstrated remorse. It also favorably commented on his good character, reputation, and Applicant's significant contribution to the profession in the form of his *pro bono* work.

Applicant did not disclose the above-mentioned attorney disciplinary proceedings in his answers to question 40 of his November 2004 and June 2006 security clearance applications (asking whether in the last seven years he had been a party to any *public record civil court actions* not listed elsewhere in the form) (emphasis added). Applicant explained he did not disclose the disciplinary proceedings and sanctions because: the process did not become a "public record" until the appeal process was completed and he did not receive the Supreme Court decision until February 2005;[12] he was not a party on a civil action; and the sanctions proceedings took place in an administrative

[12] Applicant's excuse is disingenuous considering that upon the filing of formal charges against him in May 1999, the disciplinary proceedings (including the charges, numerous hearings, the decision, and the appeal) became public. Rule XIX of the [state] Supreme Court Rules, Section 16 B.

forum, not in a "civil court."[13] The attorney disciplinary proceedings took place in an administrative forum, not in a "civil court." Thus, Applicant was not required to disclose the attorney disciplinary proceedings against him in response to question 40 of his security clearance applications.

In November 2003, a $45,877 federal tax lien was filed by the Internal Revenue Service (IRS) against Applicant and his spouse for unpaid federal taxes for calendar years 1993, 1994, 1995, 1999, 2000, and 2001. Final notices of intent to levy and enforcement action were issued on December 31, 2002, for tax year 1993; on February 15, 2003, for tax years 1994, 1995 1999, 2000, and 2001; and on March 17, 2006, for tax year 2002. For tax year 1993, Applicant's 1997 and 1998 tax returns were offset on March 8, 2004, to pay part of his debt. For tax year 1994, Applicant made three $500 partial payments in August, September, and October 2006 (AE 7, Tab C, Tax Payer Advocate Service letter to Applicant and his spouse, dated May 30, 2008, with enclosure). He paid his IRS tax debt and the federal tax lien was released on June 3, 2009 (AE 6).

Question 36 of his 2003 and 2004 security clearance applications asked him to disclose whether in the last seven years he had a lien placed against him for failing to pay taxes or other debts. In both applications, Applicant disclosed a $225 state tax lien which was later resolved. The November 2003 federal tax lien was filed after Applicant's submission of his January 2003 security clearance application. Thus, he had no knowledge of the tax lien before submitting his application.

Applicant repeatedly claimed he was not aware of the federal tax lien when he submitted his November 2004 security clearance application. His testimony is not credible. He initially testified he found about the tax lien in April 2004. He later changed his testimony and claimed he found about the tax lien in late 2004 (Tr. 175). Applicant knew or should have known he was indebted to the IRS for his unpaid federal taxes for calendar years 1993, 1994, 1995, 1999, 2000, and 2001. IRS final notices of intent to levy and enforcement action were issued on December 31, 2002 and on February 15, 2003. Applicant's IRS documents show Applicant was mailed the notices to his then home address. Applicant's 1997 and 1998 tax returns were offset to partially pay his IRS debt for tax year 1993, on March 8, 2004. Applicant must have known about the offset of his tax returns before he submitted his November 2004 security clearance application. Applicant knew of his federal tax debt and the federal tax lien and he deliberately failed to disclose it when he submitted his November 2004 security clearance application.

Questions 38 and 39 of Applicant's January 2003, November 2004, and June 2006 security clearance applications asked him to disclose whether in the last seven

[13] In 2003 emails to company personnel assisting him to complete his security clearance application, Applicant disclosed he had been a defendant on two civil actions, but indicated the cases were dismissed (Tr. 221; AE 4). He had omitted that information on his 2003 security clearance application.

years he had been over 180 days delinquent on any debts, and whether he was currently over 90 days delinquent on any debt. When he submitted both his 2003, 2004, and 2006 security clearance applications, Applicant knew he was indebted to the IRS for unpaid federal taxes for years 1993, 1994, 1995, 1999, 2000, and 2001. He deliberately failed to disclose these debts on all three Applications.[14]

SOR ¶ 2.b alleges that Applicant is indebted to a bank for $3,882, with a delinquent account number 3206. Applicant denied this allegation. His documents show he has been disputing account number 3206 since November 2006. Applicant's records show he had another credit account with the same bank (number 6326 for $7,397), which became delinquent in 2002, and was charged off in Mary 2007. In December 2008, Applicant settled this account for $1,331, and paid it (AE 7, Tab D). Applicant believes account 3206 is a fraudulent account and the bank has failed to provide him with evidence to show it is his account. Except for the two mentioned bank accounts and Applicant's IRS and state tax liens, his 2007 and 2009 credit reports (CBR) show Applicant has a clean financial record with no other delinquencies indicated.[15]

In 2001-2002, Applicant started working as an Arabic linguist. He was deployed in 2003 to a Middle East country in support of a U.S. agency. Commensurate with his duties, he was granted a top secret security clearance in early 2004, which was latter withdrawn. There is no evidence that Applicant compromised or caused others to compromise classified information. His performance as a linguist has been outstanding. He is considered to be an asset to his organization. He has been commended for his strong analytical skills, leadership, deep historical knowledge, and ability to work in diverse teams. He has established a reputation for being conscientious in the handling of classified information. He is also considered to be a credible and honest person.

Applicant is a proud and loyal U.S. citizen. He considers the United States his country. He has always supported the U.S. Government, and expressed his gratitude for the benefits he and his family have received and enjoyed in the United States. There is no evidence to show that he has ever done anything to threaten the security of the United States. He has lived in the United States half of his life and all of his immediate family are U.S. citizens.

I take administrative notice of the following facts:

Egypt is the most populous country in the Arab world. It is a republic with a developing economy and has a strong executive. Egypt is an important and strategic partner

[14] The SOR did not allege that Applicant failed to disclose these debts under Guideline F or E. As such, this information cannot be used to deny Applicant's security clearance. Notwithstanding, I may consider any behavior not alleged in the SOR to: assess his credibility; evaluate his evidence of extenuation, mitigation, or changed circumstances; assess his possible rehabilitation; determine the applicability of the AGs; and conduct the whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

[15] GEs 14 and 15. The 2009 CBR (GE 15) shows a $361 delinquent medical account, however, it provides no information to identify the creditor. This debt was not alleged in the SOR.

of the United States. The United States and Egypt enjoy a vibrant and friendly relationship based on shared mutual interest in Middle East peace and stability, strengthening trade relations, and promoting regional security. Egypt played a key role during the 1990-1991 Gulf crisis, and the United States and Egypt participate in combined military exercises. The Egyptian government receives substantial U.S. foreign aid.

Despite governmental action against terrorists, the threat of terrorism in Egypt remains high. Over the years, Egypt has suffered from numerous terrorist attacks. Major terrorist attacks where foreigners (including Americans) have been killed have occurred most recently in 2005, 2006, 2008, and 2009. 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. In addition to terrorism, extremist activities in certain areas of Egypt have created instability and public disorder.

The State Department notes that Egypt's human rights record is poor and serious abuses continue in many areas. Problems include: limitations on the right of citizens to change their government; 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. Torture occurs in Egyptian detention centers. Government corruption and lack of transparency persist.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. They provide explanations for each guideline and list potentially disqualifying conditions and mitigating conditions, which must be considered 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 goal is to achieve a fair, impartial, and commonsense decision. 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. (AG ¶ 2(c))

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 the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence."[16] Once the

[16] *See* Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case

government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government.[17]

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

> 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.

In the mid-1990s, Applicant engaged in serious professional misconduct, including: violating court orders, misleading the court, filing frivolous actions, and lying to the courts. He was severely sanctioned for his misconduct.

Applicant deliberately falsified material facts on his November 2004 security clearance application when he failed to disclose that in November 2003, the IRS filed a $45,877 federal tax lien against him and his wife for their failure to pay sufficient federal

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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).

[17] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

taxes for tax years 1993, 1994, 1995, 1999, 2000, and 2001. He also failed to disclose his debt to the IRS on his security clearance application. I do not find his statement at the hearing about his lack of knowledge of the IRS lien to be credible. Applicant's security clearance applications show he lived in his then residence from 1993 until 2005. The federal tax lien was filed in November 2003, and it correctly reflects Applicant's then residence address. More likely than not, Applicant received the notice of the federal tax lien.

Applicant's IRS documents show that he was mailed the final notices of intent to levy and enforcement action issued on December 31, 2002 and on February 15, 2003. On March 8, 2004, Applicant's 1997 and 1998 tax returns were offset to partially pay his IRS debt for tax year 1993. It is probable that Applicant received notice of the IRS collection action, the notices of intent to levy and enforcement action, and the offset of his tax returns before he submitted his November 2004 security clearance application.

I also find that Applicant deliberately falsified material facts on his November 2004 security clearance application when he failed to disclose he travelled to Egypt twice in 2000 and once in 2002. Applicant's claims of inadvertent omission are not credible. Emails between him and company personnel assisting him with completion of his application show he was specifically asked about his travels to Egypt after 1994. He failed to list his travel in his applications, and he also failed to disclose his travel in his answer to those emails. Applicant deliberately falsified his November 2004 security clearance application.

Applicant was not required to disclose his federal court and state Supreme Court sanction proceedings against him (charges, hearings, and decisions) because these proceedings are not "public record civil court actions." The disciplinary proceedings, although public after the filing of formal charges, are administrative in nature. I also find that his failure to disclose that he leased an apartment in Egypt was not deliberate. Emails between Applicant and company personnel assisting him with completion of his application show he disclosed the apartment in those emails.

Considering the record evidence as a whole - including his education, professional experience, maturity, and demeanor and testimony - I do not find his explanations for his failure to disclose the omitted information about his tax debts and his more recent trips to Egypt to be credible. Applicant deliberately failed to disclose his federal tax lien and his travel to Egypt on his security clearance application most likely because he was concerned about the negative impact his tax delinquencies and travel would have on his eligibility for a security clearance. His serious professional misconduct (violating court orders, misleading the court, filing frivolous actions, and lying to the courts) demonstrate questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

His behavior triggers the applicability of disqualifying conditions AG ¶ 16(a): "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 of status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;" and AG ¶ 16(e) "personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing."

AG ¶ 17 lists seven conditions that could mitigate the personal conduct security concerns:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
>
> (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;
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
>
> (f) the information was unsubstantiated or from a source of questionable reliability; and
>
> (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find none fully apply. Applicant falsified his security clearance applications. His falsifications are serious offenses (felony-level), they are relatively recent, and they cast doubt on his reliability, trustworthiness, and judgment. Moreover, I find Applicant minimized his questionable

behavior at his hearing. There is insufficient evidence of rehabilitation, counseling, or of steps taken to reduce his vulnerability to exploitation or duress.

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

In November 2003, the IRS filed a $45,877 federal tax lien against Applicant and his spouse for unpaid federal taxes for calendar years 1993, 1994, 1995, 1999, 2000, and 2001. Their 1997 and 1998 tax returns were offset on March 8, 2004, and applied to their debt. Applicant started making $500 installment payments on their federal tax debt in 2006. He paid off his tax debt in 2009 and the lien was released. SOR ¶ 2.b alleges that Applicant is indebted to a bank for $3,882, for a delinquent credit account. He denied this allegation. He started disputing the account in November 2006, and it is still unresolved.

The IRS lien and the delinquent debt trigger the applicability of disqualifying conditions AG ¶ 19(a): "inability or unwillingness to satisfy debts," and AG ¶ 19(c): "a history of not meeting financial obligations."

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (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;
>
> (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
>
> (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Applicant started negotiating with the IRS in 2006, and his tax debt has been paid. He also started disputing the delinquent bank account in 2006. His evidence shows he may have a reasonable basis for his dispute. He should have been more aggressive in his efforts to resolve his financial problems. Except for the delinquent bank account and Applicant's IRS tax debt and lien, his 2007 and 2009 credit reports (CBR) show he has a clean financial record with no other delinquencies indicated. He appears to be living within his financial means, and to have no financial problems.

Applicant has learned his lesson and should be able to avoid similar financial problems in the future. I find AG ¶¶ 20(d) and (e) apply. The remaining possible security concerns still raised by his financial behavior are being fully addressed, and are better considered, under the personal conduct guideline.

Guideline B, Foreign Influence

Under Guideline B, the Government's concern is stated in AG ¶ 6 as follows:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out three conditions that 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;
>
> (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) a substantial business, financial, or property interest in a foreign country, or in any foreign own or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

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.[18]

Applicant has frequent contacts and a close relationship of affection or obligation with his siblings, aunt, through his spouse with his in-laws who are citizens and residents of Egypt. The closeness of the relationship is shown by Applicant's telephone and email contacts with them, directly or through his wife, his leasing of an apartment for his aunt, and his and his wife's travel to Egypt to visit their family.

Applicant was a member of the Egyptian security forces. He has long-time friends, business partners or associates in Egypt, some of whom are or were members of the Egyptian security services. He continued his association with the Egyptian government when he provided legal advice to Egyptian embassy personnel in the United States, and by meeting with Egyptian government personnel attending training in the United States. His comments for publication on international legal issues to a Middle Eastern country newspaper likely brought him to the attention of Egyptian government officials, and possibly terrorist organizations. His brothers are or were high level officials of the Egyptian government. His contacts create a heightened risk of foreign pressure or attempted exploitation because there is always the possibility that Egyptian agents, or terrorists operating in Egypt, may exploit the opportunity to obtain sensitive or classified U.S. information.

Applicant's business interests in Egypt related primarily to his law firm. He is no longer practicing law and does not intend to do so in the future. I consider his Egyptian business interests, compared to his business interests in the United States, not significant enough to raise a security concern.

The threat of terrorism in Egypt is high. Over the years, Egypt has suffered from numerous terrorist attacks. Terrorists in Egypt target U.S. interests to exploit and undermine U.S. national security interests. They conduct intelligence activities as effectively as state intelligence services. There is also the possibility that terrorists, extremists, or criminal organizations may exploit the opportunity to obtain sensitive or classified U.S. information.

[18] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The Government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Six Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

> (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;
>
> (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
>
> (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

Considering the record as a whole, I conclude that none of the mitigating conditions fully apply. Applicant did not establish that it is unlikely he will be placed in a position of having to choose between the interests of his relatives and his in-laws and the U.S. interests.

In light of the sometimes difficult relationship between Egypt and the United States and the high threat of terrorism in Egypt, Applicant's close relationship with his relatives and friends create a risk of foreign inducement, manipulation, pressure, or coercion by the Egyptian government or terrorist organizations operating in Egypt. His

contact and close relationship with his relatives could potentially force him to choose between the United States and the interests of his relatives in Egypt. Available information sustains a conclusion that there is a risk that the Egyptian government, or terrorist organizations operating in Egypt, may attempt to exploit Applicant directly, or by exploiting Applicant's relatives. Applicant's situation creates a potential conflict of interest between Applicant's obligations to protect sensitive information and his desire or obligation to help himself, or help his family if a foreign interest were to attempt to exploit them.

AG ¶ 8(b) partially applies because Applicant has a long-standing relationship and demonstrated loyalty to the United States. He and his family have lived in the United States during the last 26 years. By all accounts, they are patriotic Americans who consider the United States their country. There is no evidence that either Applicant or any member of his family has ever done anything against the U.S. interests. AG ¶ 8(f) partially applies because Applicant's business is based in the United States, not in Egypt.

Guideline L, Outside Activities

Under AG ¶ 36, the Government's concern is that "[i]nvolvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information."

AG ¶ 37 sets out two conditions that may be disqualifying in this case:

(a) any employment or service, whether compensated or volunteer, with:

> (1) the government of a foreign country;
>
> (2) any foreign national, organization, or other entity;
>
> (3) a representative of any foreign interest;
>
> (4) any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology; and

(b) failure to report or fully disclose an outside activity when this is required.

Applicant has a long-standing relationship with the government of Egypt as a result of his important position with the Egyptian security forces prior to immigrating to the United States, his brothers' work in important positions of the Egyptian government, his services to Middle Eastern country newspaper, and his *pro bono* legal services to Egyptian embassy personnel in the United States. Additionally, through the years, he

had sporadic business with one of his Egyptian law professors. I find Applicant's contacts and behavior trigger the applicability of AG ¶¶ 37(a)(1), (2), and (3).

AG ¶ 38 outlines conditions that could mitigate the above security concerns including:

> (a) evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States; and
>
> (b) the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

Applicant has not practiced law since 2005, and he credibly testified he has no intention of practicing law again. He has not travelled to Egypt since 2007, he does not intend to work for the Middle East newspaper in the future, and has not hosted Egyptian government officials visiting the United States. The evidence supports a conclusion that Applicant has discontinued his activities of concern.

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 relevant 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is well-educated man, and a good father and husband. He supported the war on terror working as an Arabic linguist and by deploying to a Middle East country in support of a U.S. agency. He was granted access to classified information for some time. There is no evidence that

Applicant compromised or caused others to compromise classified information. He established a reputation for being conscientious in the handling of classified information. His performance as a linguist has been outstanding. He is considered to be an asset to his organization. He has been commended for his strong analytical skills, leadership, deep historical knowledge, and ability to work in diverse teams. He is also considered to be a credible and honest person.

Applicant is a proud and loyal U.S. citizen. He considers the United States his country. He has always supported the U.S. Government, and expressed his gratitude for the benefits he and his family has received and enjoy in the United States. There is no evidence to show that he has ever done anything to threaten the security of the United States. He has lived in the United States half of his life and his wife and children are loyal U.S. citizens.

Considering the record as a whole, Applicant's behavior in federal courts, his deliberate falsification of his security clearance applications, and his contacts with relatives in Egypt, leave me with doubts about Applicant's eligibility for a security clearance. "Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990).

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole-person, I conclude Applicant failed to mitigate the personal conduct and foreign influence security concerns. He mitigated the financial and outside activities 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 E:	AGAINST APPLICANT
Subparagraphs 1.a, 1.e, 1.f:	Against Applicant
Subparagraphs 1.b - 1.d, 1g:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a, 2.b:	For Applicant
Paragraph 3, Guideline B:	AGAINST APPLICANT

Subparagraphs 3.a-3.h, 3.j-3.m:	Against Applicant
Subparagraph 3.i:	For Applicant
Paragraph 4, Guideline L:	FOR APPLICANT
Subparagraphs 4.a-4.c:	For Applicant

Conclusion

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

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JUAN J. RIVERA
Administrative Judge