



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



In the matter of:)
)
) ISCR Case No. 09-02789
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: William Savarino, Esq.

November 23, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is denied.

On July 1, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 27, 2009, and requested a hearing before an administrative judge. The case was assigned to me on August 28, 2009. DOHA issued a Notice of Hearing on September 1, 2009. I convened the hearing as scheduled on September 28, 2009. The government offered Exhibits (GE) 1 through

5 and Hearing Exhibits (HE) I through XI for administrative notice. Applicant did not object; the exhibits were admitted; and I took administrative notice as requested. Applicant testified and offered Exhibits (AE) A through S, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 2, 2009.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 40 years old. He was born in Egypt. He married in 1999, and moved to the U.S. in 2001. Prior to moving he worked in the family travel business in Egypt. His wife was accepted into a graduate program in the U.S., and they saw it as a new opportunity. He became a naturalized U.S. citizen in 2005. His wife was born in Tunisia to an American mother and Tunisian father. His wife is a dual citizen of Tunisia and the U.S. Applicant and his wife have two children, ages seven and two, who were born in the U.S. They are also dual citizens of the U.S. and Tunisia. Applicant has a bachelor's degree from a university in Egypt. Applicant was self-employed as an interpreter from 2003 to 2008. He has been employed since November 2008, as an interpreter, by a government contractor.¹

Applicant's wife studied in Tunisia for about a year from 2007 to 2008. She lived with her parents while there, and their older child attended school. She and their children have Tunisian passports. Applicant's wife and children are his only family members who live in the U.S. He believes his net worth is about \$150,000. He owns a home in the U.S. He does not own property or have assets in Egypt or Tunisia.²

Applicant's parents, brother, sister, and grandmother, are citizens and residents of Egypt. His father owns a travel business that he began in 1984. His mother is a homemaker. His parents have visited him in the U.S. once in 2002, and stayed about two to three weeks. His brother works in the family travel business and operates one of the offices in a resort location. He is married and has two children. He has never visited Applicant in the U.S. His sister also works in the family business and her husband is an interior designer. They have one child. They have never visited Applicant in the U.S. Applicant calls his grandmother on the phone on holidays and special occasions. Applicant has great affection for his family and speaks to his family weekly or every two weeks. He speaks with his siblings once a month or every other month. No one in his family has worked for the Egyptian government. Applicant occasionally sends money to his parents as a gift, but does not financially support them or any other relatives.³

¹ Tr. 50-53, 56, 65, 69, 112, 121, 130-131.

² Tr. 118-122, 126, 131-132.

³ Tr. 53-63, 110, 112-115, 118.

Applicant's wife's parents live in Tunisia. Applicant's father-in-law is Tunisian and holds a U.S. green card. He is the director of personnel at a government owned petroleum company. His salary is paid by the government. His mother-in-law is American and lives in Tunisia. She studied in the U.S. His in-laws have lived in the U.S. for different periods of time so his father-in-law could maintain his green card. Applicant stated his mother-in-law is applying for Tunisian citizenship. He and his wife are in contact with her parents every two to three weeks.⁴

Applicant traveled to Egypt with his wife and children in 2004, 2005, 2006 and 2007, to see his family. He wanted to ensure that his children were introduced to Egyptian culture. He and his family attended his sister's wedding in Egypt in 2007. Normally when they travel to Egypt they also travel to Tunisia to see his wife's family. He traveled to Tunisia in July-August 2000, January-February 2001, July 2001, July-August 2006, August-September 2007, and December 2007-January 2008.⁵

Applicant has attended American universities to improve his language skills so he will have more opportunities to be a translator and linguist. He has translated for government figures who were escorting foreign dignitaries. He is serious about his work and always maintained a strict code of confidentiality. He has worked for the U.S. State Department in the past and has no negative entries about his performance. His assignments have been in the U.S. and overseas. He provided letters to support his service. Applicant has completed a prestigious international leadership program. He has received recognition for services and provided numerous certificates of completion and accomplishments. I have considered all of them.⁶

Applicant completed the compulsory military service in Egypt from 1991 to 1992. He served 13 months and was discharged. He does not have any other mandatory Egyptian service. He stated if he was recalled to duty he would not go.⁷

Applicant was interviewed by an Office of Personnel Management (OPM) investigator in December 2006. At his interview he stated he was equally loyal to Egypt and the U.S. He felt he was obligated to be loyal to Egypt because it is the country of his birth. He stated he would not renounce his Egyptian citizenship under any conditions because he believed the U.S. and Egypt are equally his countries and he did not foresee any reason to renounce either citizenship. He felt it was a right as a U.S. citizen to also keep his citizenship of birth.⁸

⁴ Tr. 62-66, 115-119.

⁵ Tr. 66-67, 117-118.

⁶ Tr. 71-88; 109; AE A, B, D, E, F, G, H, I, J, K, L, M, N, O.

⁷ Tr. 89-92.

⁸ GE 2.

Applicant explained at his hearing that his comment about his loyalty to both countries was how he felt about his Egyptian family and his American family. At the time, he did not see a conflict of interests, but understands there could be one. If there was a conflict between his family in the U.S. and his family in Egypt, he would choose his American family and the U.S. In an OPM interview in January 2009, Applicant explained he would renounce his Egyptian citizenship, if the reason was related to national security. At his hearing he stated “if it’s for the interest of the American national interest for me to renounce my citizenship I will do it and without hesitation.”⁹ He further stated he still feels loyal to and obligated to Egypt, but if there was an issue with national security, he would resolve in favor of the U.S. He loves his family in Egypt and he loves his family in the U.S., but his job is in the U.S., and if a conflict arose, he would resolve it in favor of the U.S. He further explained that his sense of loyalty is to his family, who happen to live in Egypt, and not to the country. He stated “[L]oyalty is a relative thing. I talk about my family. I’m loyal to them, but, again I have no obligation towards the Egypt government, towards the country whatsoever, especially if there is any conflict with the United States safety, security, and interest.”¹⁰

Applicant renewed his Egyptian passport in 2007, after becoming a U.S. citizen. He did not believe holding a foreign passport created a conflict of interest. He did not use his Egyptian passport after he became a U.S. citizen. He surrendered the passport to his employer on June 5, 2009, where it is maintained.¹¹ He stated he sought information from the Egyptian embassy on the procedure to renounce his citizenship.¹² He obtained some of the necessary papers. He stated he intended to renounce his Egyptian citizenship as soon as possible. He has not yet renounced his Egyptian citizenship. Applicant’s children are also considered Egyptian citizens. If Applicant renounces his Egyptian citizenship, his children would lose that status.¹³

A character witness testified on behalf of Applicant. He is a language interpreter. He has known Applicant since 2001. They both worked as self-employed contractors for the State Department. He has worked with Applicant many times. He also knows Applicant outside of work. He has met Applicant’s wife and children and knows he is committed to them. The witness believes Applicant is very reliable and intelligent. He believes Applicant always follows the rules he is given, especially those related to confidentiality.¹⁴

⁹ Tr. 106.

¹⁰ Tr. 103-108, 122-126.

¹¹ GE 3; AE C.

¹² AE Q, R, S.

¹³ Tr. 92-101, 125, 127-131; AE Q, R.

¹⁴ Tr. 34-47.

Egypt¹⁵

Egypt is the most populous country in the Arab world. It is a republic with a strong executive. Its President has been confirmed by popular referendum for his fourth term of six years. Egypt has a strong military and is a strategic partner of the U.S. The countries enjoy a strong friendly relationship based on mutual interests in the Middle East, including peace and stability, trade relations and promoting regional security. The countries' militaries participate in joint operations and exercises.

Egypt has suffered numerous terrorist attacks over the years. Americans have been victims of these attacks. Recently a Hezbollah cell was uncovered operating in Egypt. Hezbollah is a designated foreign terrorism organization and is considered by the U.S. to be one of the most technically capable terrorist groups in the world. Prior to September 11, 2001, it was responsible for more American deaths than any other terrorist group. Criminal networks associated with terrorist groups in Egypt have used tunnels to smuggle humans, weapons and other contraband into Israel and the Gaza Strip.

In addition to terrorism there have been instances of public disorder and instability in Egypt. Americans are required to receive advance approval before traveling to some areas.

Egypt's human rights record is poor and serious abuses continue. Problems include: limitations on the rights of citizens to change their government, torture, arbitrary arrest, executive branch limits and pressure on the judiciary. The government's respect for freedom of the press, association and religion declined during the year. The government continues to restrict civil liberties.

Egypt considers all children born to Egyptian fathers to be Egyptian citizens even if the child is not issued an Egyptian birth certificate or passport. Dual nationals residing in Egypt for more than six months require proof of Egyptian citizenship. Male dual nationals staying in Egypt for more than six months and who have not completed military service must obtain an exemption certificate before then can leave. Individuals who travel to Egypt on their Egyptian passport are normally treated as Egyptian citizens. The ability to provide U.S. consular assistance to those traveling on Egyptian passports is extremely limited.

Tunisia¹⁶

The government of Tunisia is a republic with a strong presidential system. It is dominated by a single political party. It has a long standing policy of seeking good relations with the U.S. It also plays an active role in Arab and African regions. Its relations with the U.S suffered after various events, such as an Israeli raid on the

¹⁵ HE I through VI; GE 4.

¹⁶ HE VII through XI; GE 5.

Palestine Liberation Organization (PLO) in Tunis, the Tunis assassination of a PLO terrorist, and the 1990 Gulf War. The relationship subsequently improved, and there remain strong bilateral ties with the U.S.

The U.S. State Department warns of Tunisia's open borders with Libya and Algeria. The terrorist group Al-Qaida in the Land of the Islamic Maghred (AQIM) and its presence in North Africa presents a potential danger to travelers. Tourists have been kidnapped and the group has begun a violent campaign of targeting westerners, including the assassination of an American.

American citizens of Tunisian origin are expected to enter and exit Tunisia on their Tunisian passports. Even if a Tunisian-American enters the country on a U.S. passport they must present a Tunisian passport to exit.

Tunisian citizens do not enjoy political freedom. The government imposes restrictions on freedom of association, speech, assembly, and they do not allow a free press. Media freedom is severely restricted and corruption is a problem. There are frequent reports of torture, abuse of prisoners, especially political prisoners, arbitrary arrests, and detention. Security forces act with impunity sanctioned by high-ranking officials. There are significant limitations on citizens' right to change their government.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

(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

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

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.

Applicant's parents, siblings and grandmother are citizens and residents of Egypt. His wife and children are dual citizens of Tunisia. His father-in-law is a citizen and resident of Tunisia and has a U.S. green card. His mother-in-law is a citizen of the U.S. and resides in Tunisia. Applicant maintains close contact with all of his family and his wife's family in Egypt and Tunisia. He travels to visit both families, as do his wife and children. Because he has not formally renounced his Egyptian citizenship, when he travels to Egypt he could be subject to Egyptian laws. He feels a strong loyalty to his family and to his country of birth. His relationship with his family in Egypt and Tunisia creates a heightened risk of foreign pressure or attempted exploitation. Although Egypt and the U.S. have ties, there are many factions in the country that create a heightened risk. Applicant's close connection with his family in Egypt and his wife's and children's dual citizenship status also creates a conflict of interests because the relationship is sufficiently close to raise a security concern. Therefore, I find disqualifying conditions (a), (b), and (d) apply to Applicant's family in Egypt and Tunisia.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; and

(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.

Applicant has a close relationship with his family in Egypt. He travels there to visit them. His wife and children are dual citizens of Tunisia. They are his only family that lives in the U.S. His father-in-law is a citizen and resident of Tunisia. His mother-in-law lives in Tunisia. Applicant feels close ties to his birth country and would resolve conflicts of interests in favor of the U.S. if it involved national security. In January 2009, he felt very strongly about maintaining his Egyptian citizenship. In June 2009, he understood there could be a perceived conflict of interest and surrendered his Egyptian passport. He explained he intended to renounce his Egyptian citizenship, but has not completed the requirements. Applicant has not met his burden of establishing that it is unlikely he will be placed in a position of having to choose between the interests of his family in Egypt and Tunisia, and the interests of the U.S. His contacts with them could potentially force him to choose between the two.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Egypt and Tunisia have ties with the U.S. However, there are active terrorist organizations within both countries that target westerners. Both governments also have a questionable human rights record. Applicant has a heavy burden of persuasion to demonstrate that his family in Egypt and Tunisia and his wife and children's dual citizenship status do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. Although Applicant states that if a conflict of interest arose he would be loyal to the U.S., that choice is contingent upon national security. Applicant attempts to separate his loyalty to his family living in Egypt and to the country itself. Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant maintains regular contact with his family in Egypt. His wife and children are dual citizens of Tunisia. His father-in-law is a citizen and resident of Tunisia and his mother-in-law resides there. Applicant and his family visit them regularly. These contacts are not casual and infrequent. Applicant has not met his burden. I find mitigating conditions (a), (b), and (c) do not apply.

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 is a well educated person who appreciates the opportunities his adopted country has afforded him. He has worked in sensitive areas as a translator and received praise for his services. Applicant is close to his family living in Egypt. His wife and children are dual citizens of Tunisia. He and his wife and their children visit their two families in Egypt and Tunisia. He expresses his loyalty to the U.S. Although he does not feel obligated to the country of Egypt, he does feel obligated to his family that lives there. His wife and children's connection to Tunisia and her family there are also a concern. His close family ties in Egypt and Tunisia create a security concern. I find he failed to mitigate the foreign influence security concerns.

Formal Findings

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

| | |
|---------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.l: | Against Applicant |
| Subparagraphs 1.m-1.n: | For Applicant |

Conclusion

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

Carol G. Ricciardello
Administrative Judge