



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 10-04519
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

June 24, 2011

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns under Guidelines C (foreign preference) and B (foreign influence). Clearance is denied.

Statement of the Case

Applicant submitted a Security Clearance Application (SF-86) on November 24, 2009. On November 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines C (foreign preference) and B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG), and effective within the Department of Defense for SORs issued after September 1, 2006.

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 Applicant, and recommended referral to an

administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on November 24, 2010, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 3, 2011, was provided to him by cover letter dated March 10, 2011. Applicant received his copy of the FORM on March 17, 2011. He was given 30 days from the date he received the FORM to submit any objections, and information in mitigation or extenuation. He did not submit additional information within the 30-day period. The case was assigned to another administrative judge on May 12, 2011, and was reassigned to me due to caseload considerations on June 3, 2011.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel requested administrative notice of facts concerning Egypt and Saudi Arabia. Department Counsel provided supporting documents to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request. (See FORM.)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from Government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. His admissions and explanations are incorporated as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Background Information

Applicant is a 34-year-old senior scientist, who has been working for a defense contractor since July 2009.¹ He is a first-time applicant for a security clearance.

Information contained in the FORM indicates that Applicant was born in Egypt where he spent his formative years. He was awarded his bachelor's and master's degrees from an Egyptian university in July 1999 and August 2002, respectively. He

¹ Background information is derived from Applicant's November 2009 SF-86 unless otherwise stated. (Item 4.)

immigrated to the United States in May 2004 to pursue his PhD, which he was awarded in May 2008. (Item 5.)

Applicant's wife was also born and raised in Egypt. Applicant and his wife married in Egypt in July 2000. They have three minor children, all of whom were born in Egypt. Applicant became a naturalized U.S. citizen in October 2007 and was issued his U.S. passport that same month.

Foreign Preference

The facts under this concern are not in dispute. Applicant holds dual citizenship with Egypt and the United States. He renewed his Egyptian passport in July 2006 and it does not expire until July 2013. Applicant last used his Egyptian passport in 2009 on a trip to Saudi Arabia. In his SOR Answer, Applicant stated that he is willing to give up his Egyptian passport, but is not willing to give up his Egyptian "nationality." (Items 3 and 5.)

Applicant received a scholarship from an Egyptian university from 2004 to 2008 valued at approximately \$100,000 to defray his education costs in the United States. He received portions of this scholarship after becoming a U.S. citizen. (Items 3 and 5.) Applicant was interviewed by an Office of Personnel Management (OPM) investigator in February 2010. During that interview, Applicant indicated he was uncertain whether his allegiance would lie with the United States or Egypt. (Items 3 and 5.) Lastly, Applicant completed mandatory military service in the Egyptian Army as an enlisted person from October 1999 to December 2000, and remained in the inactive reserve until December 2009. (Items 3 and 5.)

Foreign Influence

Again, the facts under this concern are not in dispute. Applicant's wife and three children are dual citizens of the United States and Egypt, and reside in the United States. The vast majority of Applicant's immediate and extended family live abroad and are citizens of a country other than the United States. His father-in-law is a citizen of Egypt, and lives in Saudi Arabia where he is employed as a professor at a Saudi Arabian university. Applicant's mother-in-law is a citizen of Syria, and also lives in Saudi Arabia. His brother, sister-in-law, and brother-in-law are citizens and residents of Egypt. Additionally, Applicant has two uncles, one aunt, and a grandmother who are citizens and residents of Egypt. He maintains frequent contact in varying degrees with all of his relatives in Saudi Arabia and Egypt. Lastly, Applicant maintains contact with three personal friends who are citizens and residents of Egypt. (Items 3 and 5.)

Applicant maintains real and personal property interests in Egypt consisting of a bank account valued at approximately \$35,000, as well as an apartment valued at approximately \$50,000. Applicant is in the process of sponsoring his father-in-law, mother-in-law, brother-in-law and sister-in-law for permanent residency in the United States. (Items 3 and 5.)

Applicant stated in his SOR Answer, "I am a regular Egyptian, who was naturalized in Oct 2007. I became a dual citizen and I am respecting both countries. I have almost all my family and friends in Egypt, and I am still remembering the Judge, on my oath ceremony, advising us all to keep this relation" (sic). (Item 3.)

Egypt²

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 is a strong military and strategic partner of the United States. The United States and Egypt have enjoyed a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, revitalizing the Egyptian economy, strengthening trade relations, and promoting regional security. Egypt played a key role during the 1990-1991 Gulf crisis. Former President Mubarak 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 U.S. and the U.K. Currently, the U.S. 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 U.S., and the largest military exercise in the region. Yet, even taking into account their mutual interests and military cooperation, the Egyptian-U.S. relationship has gradually deteriorated over the last decade.

Egypt has suffered from numerous terrorist attacks over the years. These attacks generally coincide with major local holidays and occur in or near tourist sites. Major terrorist attacks, where foreigners have either been killed, injured or kidnapped, have occurred most recently in July 2005, April 2006, September 2008, and February 2009. Americans have been the victims of some of these terrorist attacks within Egypt.

In April 2009, the Egyptian government "uncovered a 49-person Hezbollah cell clandestinely operating in Egypt." Hezbollah is a designated foreign terrorist organization and is considered by the United States to be "the most technically-capable terrorist group in the world." Prior to September 11, 2001, Hezbollah "was responsible for more American deaths than any other terrorist group", including the "suicide truck bombings of the U.S. Embassy and U.S. Marine barracks in Beirut in 1983, and the U.S. Embassy annex in Beirut in 1984, and the 1985 hijacking of TWA flight 847, during which a U.S. navy diver was murdered."

Criminal networks that may be associated with terrorist groups in the region, including Hezbollah, have used tunnels located in Egypt to smuggle humans, weapons, and other contraband into Israel and the Gaza Strip. In addition to terrorism, extremist activity in certain areas of Egypt has created instability and public disorder. U.S. Embassy personnel are required to receive advanced approval before traveling to these locations and the State Department advises all Americans to contact the U.S. Embassy in Egypt prior to travel to these locations.

² The country summaries are derived in whole or in part from the FORM and accompanying documents.

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, and executive branch limits and pressure on the judiciary. "The government's respect for freedoms of association and religion remained poor during the year, and the government continued to restrict nongovernmental organizations (NGOs). The government partially restricted freedom of expression." In 2008, the U.S. Congress passed legislation that withheld U.S. financial assistance until the Secretary of State certified that Egypt had taken concrete steps in certain vital areas, including improving its human rights record and curbed smuggling along the border with Gaza. The former Secretary of State had to exercise a waiver of these conditions in order to authorize the release of financial assistance to Egypt. Pending legislation before the current U.S. Congress "calls on the Egyptian Government to, among other things, 'end all forms of harassment, including judicial measures, the detention of media professionals and, more generally, human rights defenders and activists calling for reforms'."

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, such as a family I.D. card. Further, male dual nationals staying in Egypt for more than six months from the date of arrival and who have not completed military service must obtain an exemption certificate through the Ministry of Defense before they can leave Egypt. Individuals who travel to Egypt on their Egyptian passports are normally treated as Egyptian citizens by the local government. The ability to provide U.S. consular assistance to those traveling on Egyptian passports is extremely limited.

Saudi Arabia

The central institution of the Saudi Arabian Government is the monarchy ruled by the Al Saud family, and there are no political parties or national elections. The Qu'ran is the constitution of the country and Saudi Arabia is governed on the basis of Islamic Law (Shari'a).

Despite generally good relations, the United States remains concerned about human rights conditions in Saudi Arabia. Principal human rights issues include abuse of prisoners and incommunicado detention; prohibitions or severe restrictions on freedom of speech, press, peaceful assembly and association, and religion; denial of the right of citizens to change their government; systematic discrimination against women and ethnic and religious minorities; and suppression of workers' rights. Saudi Arabia has a religious police known as the Mutawwa'in (MOI) or the Committee for the Promotion of Virtue and Prevention of Vice (CPVPV) which reports directly to the king. The religious police monitor public behavior to enforce strict adherence to conservative Islamic norms. In years past, the CPVPV and MOI have been accused of harassing, abusing, and detaining citizens and foreigners of both sexes.

In Saudi Arabia, the law guarantees the inviolability of homes and the privacy of correspondence. Despite these provisions, custom officials routinely opened mail and

shipments to search for contraband, including material deemed pornographic or that appeared to be non-Sunni Islamic material. The authorities also opened mail and used informants and wiretaps in internal security and criminal matters. Informants and, in some districts, an informal system of ward bosses, reported to the MOI “seditious ideas,” anti-government activity, or “behavior contrary to Islam” in their neighborhoods.

The United States and Saudi Arabia share a common concern about regional security, oil exports and imports, and sustainable development. However, Saudi Arabia’s relations with the United States were strained after the September 11, 2001, terrorist attacks in which 15 of the suicide bombers were Saudi citizens. Additionally, on May 12, 2003, suicide bombers killed 35 people, including nine Americans, in attacks at three housing compounds for Westerners in Riyadh. On June 9 and June 12, 2004, terrorists killed two Americans. On June 18, 2004, terrorists kidnapped and beheaded another American. On December 6, 2004, terrorists attacked the U.S. Consulate in Jeddah, killing five consulate employees.

A Travel Warning is in effect for Saudi Arabia due to concerns about the possibility of terrorist activity directed against American citizens and interests. Terrorist groups continue to target housing compounds and other establishments where westerners may be located. These terrorist groups may employ a wide variety of tactics and also may target Saudi Government facilities and economic/commercial targets within the Kingdom.

Individuals and organizations based in Saudi Arabia have been designated by the U.S. Government as providing financial and material support to Al-Qaeda and other terrorist groups. “[M]any critics of Saudi policies have cited reports that the Saudi government permitted or encouraged fund raising in Saudi Arabia by some charitable religious groups and foundations that espoused extremist ideologies or were linked to or exploited by Al-Qaeda and other terrorist groups.” Al-Qaeda is a foreign terrorist organization established by Osama bin Ladin in 1988 that launched attacks against Americans in Saudi Arabia in 2003 and 2004. On September 11, 2001, nineteen Al-Qaeda members hijacked and crashed four U.S. commercial jets on American soil, leaving nearly 3,000 individuals dead or missing.

The Saudi government continues to confront terrorism and extremist ideologies, although with varying degrees of success. In the first six months of 2008, the Saudi government arrested over 700 militants who had allegedly been planning to attack oil fields and other vital installations. It also planned terrorism trials for almost 1,000 individuals indicted on various terrorism-related charges including terrorist finance.

Saudi Arabia maintains contact with the two main Palestinian political entities – the secular nationalist Fatah movement and the Islamic Resistance Movement, more commonly known as Hamas, which remains a U.S.-designated foreign terrorist organization. The Saudi government has at times pursued policies relating to the Palestinians that are divergent from the expressed preferences of the United States.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Egan* at 528.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security

clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines C (foreign preference) and B (foreign influence) with respect to the allegations set forth in the SOR.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, “when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying in Applicant’s case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant was born in Egypt, and he is a dual citizen of Egypt and the United States. He maintains and has used his Egyptian passport during a 2009 visit to Saudi Arabia in lieu of his U.S. passport. He renewed his Egyptian passport in July 2006 and it does not expire until July 2013. Applicant stated that he would be willing to give up his Egyptian passport, but has not done so. He does not intend to relinquish his Egyptian citizenship. Applicant was ambivalent regarding whether his loyalties were with the United States or Egypt during a February 2010 OPM interview. Lastly, Applicant served in the Egyptian Army before immigrating to the United States and remained in the inactive reserve after becoming a U.S. citizen. Based on the foregoing, AG ¶ 10(a)(1), (2), (3), and 10(d) apply.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant's loyalties appear to be conflicted between the United States and Egypt as evidenced by his statement that he is unable to state with certainty where his allegiance lies during a February 2010 OPM interview. He still retains a valid Egyptian passport and is unwilling to renounce his Egyptian citizenship. Applicant received over \$100,000 in scholarship money from an Egyptian university to pursue his PhD in the United States and continued to receive these funds after becoming a U.S. citizen. The FORM contains insufficient mitigating evidence and accordingly none of the mitigating conditions fully apply. Foreign preference concerns are not mitigated.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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;

(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; and

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

AG ¶¶ 7(a), 7(b), 7(d) and 7(e) are raised by Applicant's relationships with his family members who are living in Egypt and Saudi Arabia as well as his property interests in Egypt. Applicant, his spouse, and three children are dual U.S.-Egyptian citizens. His father-in-law is a citizen of Egypt and his mother-in-law is a citizen of Syria. Applicant's father-in-law is a professor at a Saudi Arabian university. Both of these in-laws are residents of Saudi Arabia. Applicant's brother, sister-in-law, brother-in-law, two uncles, one aunt, grandmother, and three personal friends are citizens and residents of Egypt. Applicant maintains frequent contact with all of his relatives and friends in Egypt and Saudi Arabia in varying degrees.

Applicant shares living quarters with his spouse and three children. Applicant maintains a bank account in Egypt valued at approximately \$35,000 and owns an apartment in Egypt valued at approximately \$50,000.

Applicant's communications with his relatives in Egypt and Saudi Arabia are frequent. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has not fully rebutted this presumption. Applicant and his spouse's relationships with family living in Egypt and Saudi Arabia are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships with residents of Egypt and Saudi Arabia create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his family living in Egypt and Saudi Arabia.

The mere possession of close family ties with a family member living in Egypt and Saudi Arabia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could possibly result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The Government submitted country summaries for Egypt and Saudi Arabia. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Egypt and Saudi Arabia do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his family living in Egypt and Saudi Arabia.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from Egypt or Saudi Arabia seek or have sought classified or economic information from or through Applicant, or family members, it is not possible to rule out such a possibility in the future. Applicant's communications with his family living in Egypt and Saudi Arabia are frequent. Applicant's concern for the welfare of his family living in Egypt and Saudi Arabia is a positive character trait that increases his trustworthiness; however, it also increases the concern about potential foreign influence. Applicant also acquired real and personal property in Egypt in the form of a bank account and an apartment. The Government produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(d) and (7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.

AG ¶¶ 8(a), 8(c), and 8(f) have limited applicability. Applicant traveled to Saudi Arabia in 2009. Applicant and his wife have frequent contacts with their family members living in Egypt and Saudi Arabia. The amount of contacts between an Applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced or influenced through their relatives. Because of his

connections to his wife, and their connections to their family members living in Egypt and Saudi Arabia, Applicant is not able to fully meet his burden of showing there is “little likelihood that [he and his spouse’s relationships with relatives who are residents of Egypt and Saudi Arabia] could create a risk for foreign influence or exploitation.” His frequent contact with his relatives and friends living in Egypt and Saudi Arabia in varying degrees is an objective manifestation of affection and closeness towards his family members and friends living in those countries.

AG ¶ 8(b) does not apply. Applicant expressed ambivalence regarding his loyalty to the United States versus Egypt. He maintains a bank account and real property in Egypt. The FORM contains no evidence of Applicant’s U.S. assets precluding an analysis of comparing his assets in Egypt versus those in the United States. Although Applicant received his PhD degree in the United States, he was able to do so with funds provided to him by an Egyptian university. Applicant offered no employer references or evidence that would demonstrate his involvement with or connections to the United States other than his relatively brief employment with a U.S.-based company since July 2009.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family members who live in Egypt and Saudi Arabia. There is no evidence that terrorists, criminals, the Egyptian or Saudi Arabian governments, or those conducting espionage have approached or threatened Applicant, his wife, or his family members living in those countries to coerce or influence Applicant for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant’s involvement with his family living in Egypt. Applicant is not required to report his contacts with his family living in Egypt.

AG ¶ 8(f) is not applicable. As discussed, Applicant has real and personal property interests in Egypt and the FORM contains no evidence of his assets in the United States. Applicant, his wife and three children are all dual citizens of Egypt and the United States. In Applicant’s case, he specifically indicated that he is not willing to give up his Egyptian citizenship. Based on his education and profession, he would appear to have considerable flexibility where he chooses to live.

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.

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. The comments in the Analysis section are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant has lived in the United States with his wife for approximately seven years. Applicant has a successful career with his company and attained a prominent position within his company. He has earned a PhD degree in the United States.

There is no derogatory information concerning Applicant's police, financial, or employment records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He is a law-abiding U.S. citizen; however, he is ambivalent about where his loyalties lie and he maintains real and personal property assets in Egypt.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole-person. I conclude he has not mitigated the foreign preference and 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 C:	AGAINST APPLICANT
Subparagraph 1a – 1d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2a – 2h:	Against Applicant
Subparagraphs 2i – 2j:	For Applicant

Conclusion

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

Robert J. Tuidor
Administrative Judge