



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



In the matter of:)	
)	
)	ISCR Case No. 10-04803
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

05/16/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant's brother and parents are citizens and residents of Egypt. His parents are permanent legal residents of the United States. His brother has applied for a U.S. visa and is waiting for the processing of that request to be completed. Once the visa is issued, they will all come to the United States. Applicant has rebutted or mitigated the security concerns under Guideline B, Foreign Influence. Clearance is granted.

History of the Case

Applicant contests the Department of Defense's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on August 26, 2011, detailing security concerns under Guideline B, Foreign Influence.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On November 23, 2011, Applicant answered the SOR and requested a hearing. On April 9, 2012, I was assigned the case. On March 13, 2012 and April 2, 2012, DOHA issued Notices of Hearing for the hearing held on April 12, 2012.

The Government offered exhibits (Ex.) one through three, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through J, which were admitted into evidence without objection. On April 23, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted his parents and brother are citizens and residents of Egypt. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 34-year-old system administrator who has worked for a defense contractor since July 2011. In January 2008, he worked as a linguist for the U.S. Army. He has spent 46 months working for defense contractors in Kuwait, Iraq, and Afghanistan. He was stationed in Kuwait in October 2008 – March 2009, in Afghanistan August 2009 – January 2010, and in Iraq January 2008 – April 2009, and June 2010 – July 2011. (Ex. 2, Tr. 75, 78, 79, 80) He was the personal linguist for an Army brigadier general. (Ex. 1, Tr. 73) He seeks to maintain a security clearance. (Ex. A) Immediately after arriving in Iraq, he underwent one of the worst periods of rocket and mortar attacks experienced in Baghdad's International Zone. He also came under hostile fire in Afghanistan. (Tr. 120)

Applicant's co-workers, supervisors, and friends state: Applicant is reliable, dedicated, a true professional and team player of the highest moral character and integrity. (Ex. I) In December 2011, he received a monetary award for outstanding duty performance. (Exs. C and D) He is able to handle a high-volume workload. (Ex. I) He demonstrates superb leadership and management skills.

A Marine Corps major, who lived and worked with Applicant for six months in Iraq, was very impressed with Applicant's duty performance and formed a positive opinion of him. (Tr. 36) He stated Applicant is a hard worker, honest, loyal, would not be vulnerable to pressure, coercion, or exploitation, and would be a valuable asset in any capacity in which he served. (Tr. 40 - 46) His supervisor who worked with him daily in Iraq and Kuwait believes Applicant to be honest, trustworthy, and a good asset to the company. (Tr. 50 – 62).

Applicant was born in Egypt and became a U.S. citizen in September 2006. (Ex. 1) When he became a U.S. citizen, he renounced all loyalty and allegiance to Egypt. In December 1995, when he came to the U.S. on a student visa, he was 18 years old and had just finished high school. (Tr. 65) At the time, his older brother was also a student in the U.S. In December 2004, he obtained a bachelor's of science degree in computer network management from a U.S. college. In 2008, he earned a master's in business. (Tr. 67) He is married to a native-born U.S. citizen. They have two sons ages five and

three. (Ex. 1, Tr. 68) They moved and now live close to her parents. (Tr. 115) He owns no property or assets outside of the U.S. (Tr. 68) He has approximately \$100,000 of assets in the U.S. (Tr. 136)

In 1975, prior to Applicant's birth, his father retired from the Egyptian Navy as a captain. (Tr. 87) He then worked as a supply boat captain in the private sector until he retired in 2010. (Tr. 87, 99, 104, 109) Applicant's mother was a homemaker. (Ex. 2, Tr. 89) His parents and older brother are permanent legal residents of the United States. (Ex. J) His mother received her green card in 2008 and his father received his in April 2011. (Tr. 109, 115) His older brother has filed for U.S. citizenship, has a case number, and should receive his U.S. citizenship within the next few months. (Tr. 92, 105) His mother is eligible to file for U.S. citizenship and will soon do so. (Tr. 92)

Applicant's other brother is a citizen of Egypt and was working as an engineer for an oil company in Dubai. (Tr. 125) This brother is seeking an E-2 investor's visa to allow him to reside in the U.S. (Tr. 118) His brothers are seven and nine years older than him. (Tr. 106)

After Applicant married and had children, his mother started coming to the United States every year to see her grandchildren. (Tr. 107) As soon as his father retired, his father visited Applicant's older brother for a year and a half. (Tr. 109) For the last few years, Applicant's parents have been living in the U.S. with Applicant's older brother (Tr. 88) His parents would spend nine months in the U.S. and two or three in Egypt. After his father received his green card in April 2011, his parents returned to Egypt to sell their assets so they can proceed with their son's E2 visa. (Tr. 87, 90, 109) The assets, which included apartments, cars, and vehicles, have now been sold and they plan on moving to the United States within the next few months. (Tr. 125) They are waiting for the brother's paperwork to be processed.

The family has decided to invest most of his older brother's savings and his father's retirement account into a pizza business in the United States. (Tr. 91) Applicant's older brother already owns two pizza shops. (Tr. 91) Applicant has frequent contact with his parents. (Tr. 108) None of his relatives are involved in politics. (Tr. 122)

Applicant understands the concern of having relatives in a foreign country. (Tr. 122) He states he swore an oath to protect the U.S. Constitution and would never compromise information. (Tr. 95) He would report any incidents regarding his family to his security officer or the military police. (Tr. 96) Due to his wife and children, the amount of time he has living in the U.S., the training he has received, and his employment for the last four years, he would protect U.S. interests. (Tr. 125) He understands the importance of a security clearance. (Tr. 127) His loyalty is with the U.S. He chose to put himself in harm's way to serve his country and help the U.S. military.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Egypt. (Tr. 13) The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1. The facts administratively noticed are set out in the Findings of Fact, below.

Egypt

I take administrative notice of the following facts. Egypt is a republic with a strong executive that has entered into a period of profound uncertainty.² In February 2011, Hosni Mubarak, the president for the past 29 years, resigned and a Supreme Council of the Armed Forces exercises executive authority.³

In the past, the United States and Egypt enjoyed a strong and friendly relationship based on shared mutual interests in Middle East peace and stability, strengthening trade relations, and promoting regional security.⁴

The threat of terrorism in Egypt remains high and transnational terrorist groups and local terrorist groups pose threats in Egypt despite Egypt's aggressive pursuit of terrorists and extremism. In 2003, Egypt discovered and disrupted a terrorist plot against U.S. interests. Between 2004 and 2006, Egypt suffered a series of deadly, coordinated terrorist bombings, which caused many deaths and hundreds of injuries, including U.S. citizens.⁵ Although the Egyptian government took measures against the perpetrators of the attacks, there is a persistent, indigenous threat of terrorist activities. In April 2009, the Egyptian government uncovered a Hezbollah cell clandestinely operating in Egypt.

Terrorists use overt, covert, and clandestine activities to exploit and undermine U.S. national security interests. Terrorist organizations currently target the U.S. for intelligence collection through human espionage and other means.⁶ Terrorist groups conduct intelligence activities as effectively as state intelligence services.

² CRS Report for Congress, *Egypt: Background and U.S. Relations*, dated February 4, 2011 (CRS Background 2010) at 1.

³ CRS Report for Congress, *Egypt in Transition*, dated November 18, 2011 at Summary.

⁴ U.S. Department of State, *Background Note: Egypt*, dated November 10, 2010 at 9.

⁵ Department of State, *Country Reports on Terrorism, Chapter 2 – Country Reports: Middle East and North Africa Overview*, April 30, 2007. (Ex E III)

⁶ *Statement for the Record by Michelle Van Cleave from the National Counterintelligence Executive*, Before the House Judiciary Subcommittee on Immigration, Border Security and Claims, Hearing on Sources and Methods of Foreign National Engaged in Economic and Military Espionage.

The State Department notes that Egypt's human rights record is poor and serious abuses continue in many areas. Problems include: restriction of freedom of speech, press, assembly, and association, denial of fair trial, lack of due process, limitations on the right of citizens to change their government, arbitrary arrest, prolonged detention, poor prison conditions, political prisoners and detainees, torture, as well as executive branch limitation on an independent judiciary. Torture in Egyptian detention centers is pervasive.

Opposition parties continue to lodge credible complaints about election manipulation by the government even though recent elections were more transparent and better executed than in the past. There remain significant restrictions on the political process and freedom of expression for non-governmental organizations. The government of Egypt considers all children born to Egyptian fathers to be Egyptian citizens.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 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 interests of 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the Government’s 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 United States 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. The two conditions applicable to this case are:

- (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, and
- (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.

Applicant’s parents and brother are citizens and residents of the Egypt. His parents are both permanent U.S. residents currently residing in Egypt. One brother is also a permanent U.S. resident residing in the United States, and his other brother is a

citizen and resident of Egypt, who has applied for a U.S. visa. Applicant's contact with his parents is frequent. His connections to his family also create a potential conflict of interest because the relationships are sufficiently close in nature and could raise a security concern over his desire to help his parents and brother.

The government presented sufficient evidence to support the factual allegations in the SOR. AG ¶ 7(a) and 7(b) apply.

Two of the mitigating conditions under AG ¶ 8 are potentially applicable:

(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 United States; and

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the United States interest.

Applicant has professed his total loyalty to the United States. He has no financial interest located in the Egypt or in any other foreign country. It was Applicant's decision to stay in the United States and not return to Egypt after obtaining his education.

Based on Applicant's relationship and depth of loyalty to the United States, Applicant can be expected to resolve any conflict of interest in favor of United States interests. He has lived in the United States since 1995, when he arrived to attend university. After earning an undergraduate and advanced degrees, he began working in the United States. In 2006, he became a United States citizen. His ties to Egypt have become minimal over the years.

I have considered the information of which I have taken administrative notice concerning Egypt. That information discloses that Egypt is a country that is in a state of flux and turmoil. It has experienced a degree of political and economic instability since February 2011, when the president for the previous 29 years left office. The country's future is uncertain.

As to the potential for coercion, available information shows that Egypt is an open, market society, governed through a democratically elected legislature and executive, checked by an independent judiciary. It is not a hostile, totalitarian state seeking to project its power worldwide through the brute intimidation or coercion of its citizens domestically and abroad. However, citizens are subject to terrorists' acts and other actions of lawless individuals. While there are notable problems regarding human

rights abuses in Egypt, all of the available information shows Applicant's parents and brother are not likely to be subject to coercive methods to obtain information from Applicant. I conclude there is little likelihood Egypt, a nation previously friendly toward the United States, will try to leverage Applicant's relationship with his parents and brother to gain access to the information with which Applicant works.

Neither his mother, a housewife, nor his brother, an engineer, are in positions connected with the Egyptian government or engaged in activities that would likely cause Applicant to be exploited or placed in a position of having to choose between them and the United States. His father is receiving a pension as a retired captain with the Egyptian Navy. He has been retired 37 years. Considering all available information about Egypt, Applicant is entitled to substantial consideration under AG ¶ 8(a).

Applicant established the application of AG ¶ 8(b) based on his relationship and depth of loyalty to the United States. He can be expected to resolve any conflict of interest in favor of United States interests. Based on the foregoing, I conclude SOR ¶ 1.a – 1.c for the Applicant, and further conclude available information is sufficient to mitigate the security concerns raised under Guideline B. Even if there were insufficient mitigation under Guideline B, I would mitigate the security concerns under the whole-person concept.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the United States relative to his [or her] ties to a foreign country; his or her social ties within the United States; and many other

[factors] raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). Substantial mitigating evidence weighs toward granting Applicant a security clearance under the whole-person concept.

As indicated in the statement of facts, there are many positive attributes to Applicant’s life as a U.S. citizen that weigh towards granting a clearance. Applicant has close ties to the United States. His closest family members are his wife and children, U.S. citizens born and raised, who live with him. Additionally, his brother lives in the U.S and has applied for U.S. citizenship. Because his wife and brother live in the United States, they are not vulnerable to coercion or exploitation by a foreign power, except possibly his brother indirectly through relatives in Egypt who will soon move to the United States.

Applicant is fully entrenched in the United States, has no foreign financial interests, and is unlikely to compromise his life here. Applicant is a mature person. He has lived in the United States for 17 years, most of his adulthood, and has been a naturalized citizen for the past six years. He earned an undergraduate degree and an advanced degree from United States institutions. He is a successful member of his business community, providing services to the United States Government and private industry. His ties to the United States are much stronger than his ties to Egypt. Applicant and his wife have no foreign assets and approximately \$100,000 in assets in the United States. There is no evidence he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and he renounced his Egyptian citizenship after taking his U.S. oath of citizenship. There is no derogatory information about him in the record.

The “whole person” analysis in a Guideline B case should include “the totality of an applicant’s conduct and circumstance[s] (including the realistic potential for exploitation).” In 2008 through 2011, Applicant served in combat zones coming under hostile fire. His co-workers and supervisors speak highly of his duty performance during those stressful times. Applicant’s potential for exploitation is low. I base this finding on his credible and sincere testimony, and I do not believe he would compromise national security, or otherwise comply with any Egyptian threats.

A fair and commonsense assessment of the entire record before me shows the Government’s doubts about Applicant’s suitability to have access to classified information are based solely on his parents and brother being citizens and residences of Egypt. His parents are permanent U.S. legal residents and his brother has applied for a visa. They would currently be living in the United States were it not for the wait associated with the processing of Applicant’s brother’s visa. Overall, the record evidence leaves me without questions as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence.

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, B, Foreign Influence: FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge