



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



In the matter of:)	
)	
)	ISCR Case No. 11-06465
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Brian E. Kaveney, Esq.

05/23/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized citizen of the United States originally from Egypt, maintains close relationships with family members in Egypt and in-laws in Taiwan. However, the record establishes that in the more than 20 years Applicant has lived in the United States, he has cultivated a network of family and friends and accumulated significant U.S.-based assets that firmly root him to the United States, thereby mitigating the foreign influence concerns raised in this case. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order (EO) and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

October 13, 2011, notifying Applicant that it was unable to find that it is clearly consistent with the national interest to continue his access to classified information. DOHA recommended that his case be submitted to an administrative judge for a determination whether to revoke his clearance. The SOR detailed the reasons for the action under Guideline B (foreign influence).

Applicant answered the SOR on November 9, 2011 and requested a hearing. The case was assigned to me on February 7, 2012. The hearing proceeded as scheduled on March 29, 2012. Department Counsel offered Government's Exhibits (GE) 1 and 2, which were admitted. Applicant's Exhibits (AE) A through FFF were admitted without objection. I received the transcript (Tr.) on April 11, 2012.

Evidentiary Rulings

Request for Administrative Notice

At hearing, Department Counsel requested that I take administrative notice of certain facts about Egypt, Taiwan, Hong Kong, and the People's Republic of China. The administrative notice summary regarding these countries is appended to the record as Hearing Exhibit (HE) 1 over Applicant's objections.² The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 43-year-old engineer, originally from Egypt. He is employed by an engineering firm that frequently works on projects for the federal government requiring access to classified information. Applicant completed his undergraduate education and one year of compulsory military service, which ended in 1990, in Egypt. He was released from his mandatory obligation to the Egyptian Army reserves in 2000. Applicant immigrated to the United States in 1991 to attend graduate school, earning a master's degree and a master's of philosophy from two prominent U.S. schools. Applicant has worked for his employer, who sponsored Applicant's work visa and citizenship application, for 20 years. Applicant became a naturalized citizen of the United States in 2006.³

Applicant's mother is a citizen and resident of Egypt. A retired airline employee, she supports herself using the proceeds of her pension and the money left to her by her deceased husband. She does not rely on Applicant for financial support. Applicant maintains contact with his mother weekly, by telephone. His 17-year-old son, born during his first marriage, is a dual U.S.-Egyptian citizen living in Egypt with Applicant's

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

² Applicant's counsel objected to the administrative notice summary as it relates to Egypt on the basis that it does not establish a heightened risk as required under AG ¶¶ 7(a) and (b).

³Tr. 68-70, 81, 102-103, 125.

ex-wife. He attends an American high school in a large city. Applicant speaks to his son at least twice each month by telephone and maintains contact with him using a social media website. At the request of his ex-wife, Applicant does not contribute to the financial support of his son. Applicant's older brother is a citizen and resident of Egypt, who works as the chief operating officer (CEO) of an Egyptian company. Applicant travels to Egypt at least once a year to visit his family members.⁴

When Applicant's father died in 2008, he bequeathed to Applicant, his brother, and their mother, joint ownership of a commercial property that Applicant believes to be currently valued at \$1.2 million dollars.⁵ Applicant's brother, with Applicant's and his mother's power of attorney, manages the building, which is currently unoccupied. In 2009 and 2010, the building generated rental income. Applicant's brother would deposit Applicant's share into a bank account that Applicant established specifically for that purpose. The account, held by a large international bank, allows Applicant to transfer the funds to his U.S. accounts without interacting with Egyptian officials. Applicant reported the rental income he received, which amounted to 17 percent of his total earnings over the two years, on his federal income taxes as required. Like Applicant, neither his mother nor brother relies on the building for income. Because of a downturn in the commercial real estate market, Applicant is unable to divest himself of his interest in the property either to a third party or his mother or brother.⁶

In 2009, Applicant married his second wife, a permanent resident of the United States, who is originally from Taiwan. The couple met through a popular U.S.-based online dating website in 2007. Unemployed since being laid off from her job as a graphic designer in 2009, she has been accepted to a master's program that will begin in the fall of 2012. Applicant and his wife have an 11-month-old son, who is a U.S. citizen by birth. Applicant has no intention of obtaining Egyptian citizenship for this child as he did with his older son. Applicant's parents-in-law and two brothers-in-law are residents and citizens of Taiwan. His mother-in-law is a retired teacher. His father-in-law and one brother-in-law teach at the same private university in Hong Kong.⁷ His other brother-in-law is a banker in Taiwan. Applicant and his wife visit her family in Taiwan every year. Outside these visits, a language barrier prevents Applicant from maintaining independent relationships with his in-laws. Applicant always reports his contacts with foreign family members to his facility security officer.⁸

In the 21 years Applicant has lived in the United States, he has accumulated almost \$1 million in assets including his home, bank accounts, retirement savings, and

⁴ Tr. 64-65, 86-91.

⁵ Applicant's previous valuation of the property of \$1.5 million dollars was based on the exchange rate between the U.S. dollar and the Egyptian pound at the time of his subject interview in February 2011.

⁶ Tr. 92-98, 100-102, 128-129.

⁷ The SOR incorrectly alleges that Applicant's brother-in-law teaches at a university in Taiwan.

⁸ Tr. 112-124, 134-141.

life insurance. He has a net worth over \$800,000, which does not include his interest in the property in Egypt.⁹

Before submitting his application for security clearance, Applicant's facility security officer, (FSO) vetted him carefully. Given the specialized and sensitive nature of the firm's work, the firm has developed a strong security culture. The FSO, who has worked for the firm for over 30 years, has implemented a layered security protocol, which includes training, briefing, access controls, reporting, personal contact, a close partnership with the Federal Bureau of Investigation, and compliance audits. In the past, the firm successfully negotiated an instance where a foreign actor attempted to influence an employee working abroad. Because of the firm's stringent security protocols, the organization has twice received awards from DoD regarding its implementation of the defense industrial security program. Of the nearly 11,000 cleared contractors only 12 receive the award annually. In addition to its engineering work, the firm is also hired by municipalities and other companies to develop their security protocols.¹⁰

The FSO also believes the strict security environment is maintained by the small and close-knit nature of the firm, which has 300 employees, many of whom have worked there for over 20 years. The chief technology officer (CTO) describes the firm as "a mutually supportive environment . . . where privacy is seldom granted." Every day for the past 20 years, Applicant has eaten lunch with a group of employees including the firm's CEO, CTO, FSO, and managing director of the firm's business group (managing director). They openly and freely share personal information with each other. In the CTO's opinion, it would be difficult for any member of the group to conceal information from the others or hide any outside pressure or strain.¹¹

The CEO, CTO, FSO, and managing director testified at the hearing and submitted affidavits on Applicant's behalf. Applicant and the CEO have a mentor/mentee relationship that began when Applicant was in graduate school. The CEO, then a professor in Applicant's graduate program, recruited Applicant into the firm. The two talk regularly as Applicant consults the CEO for advice on personal and professional matters. The CTO also considers Applicant a friend, who supported him when his newborn child required treatment in the neo-natal intensive care unit after birth. In turn, the CTO was present when Applicant's youngest son was born. The FSO accompanied Applicant to his naturalization ceremony, and he and his wife were witnesses at Applicant's wedding in 2009. All recounted the leadership Applicant displayed as the firm negotiated the September 2011 terrorist attacks and a black out that debilitated their city in 2006.¹²

⁹ Tr. 98-100.

¹⁰ AE Z.

¹¹ AE R, Z.

¹² AE R, Z, CC.

The managing director, who staffs each of the firm's projects and who ultimately approved the firm's sponsorship of Applicant's security clearance application, lauded Applicant's character and believes that he has demonstrated a high respect for authority and that he follows rules and regulations required of him from an engineering and security prospective. For these reasons, he felt comfortable staffing Applicant on federal government projects in Egypt in 2006, 2008, and most recently in February 2012. The FSO echoed this assessment stating that Applicant has followed the rules and regulations of the National Industrial Security Program and its reporting requirements. He also attests that Applicant has been appropriately trained and briefed on his security duties and that he is keenly aware of the responsibilities that accompany holding a security clearance.¹³

Although he is unable to renounce his Egyptian citizenship, which can only be done by an act of the Egyptian government, Applicant considers himself only a citizen of the United States. Before submitting his security clearance application, he surrendered his Egyptian passport to his FSO. He also chose not to participate in the most recent Egyptian elections, which allowed, for the first time, Egyptian citizens living abroad to cast ballots.¹⁴

Egypt

Egypt is a republic with a strong executive that has entered into a period of profound uncertainty. In February 2011, Hosni Mubarak, the president for the past 29 years, resigned. A Supreme Council of the Armed Forces exercises executive authority. 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.

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. 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. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

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

¹³ Tr. 66, 108-111; AE Z, BB.

¹⁴ Tr. 82-83.

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.

Republic of Taiwan (Taiwan)

In 1949, two million refugees fled a civil war with Communist forces on the Chinese mainland, and established the Republic of China on the island of Taiwan. On the mainland, the Communists established the People's Republic of China (PRC). In the 1979 Taiwan Relations Act (TRA), the United States issued the "one China" policy, formally recognizing the People's Republic of China (PRC) as China's sole legal government.

Taiwan and the PRC have significant economic ties, which are attributable to their physical proximity and history. Taiwan's primary defense goal is to deter invasion from the PRC, which has not renounced the use of force against Taiwan. Because of its geographic location, Taiwan has a particular interest in information from the United States that could aid it in its own defense. In 2008, Taiwan nationals were involved in cases of industrial espionage and export of controlled items. The United States sells appropriate defensive military equipment to Taiwan, in accordance with the TRA.

Taiwan has become a modern multi-party democracy with active public participation in government. It is an economic power and a leading producer of high-technology goods. The United States continues to maintain strong unofficial relations with Taiwan that include significant commercial ties; objections to PRC threats to use force against Taiwan; support of democratic developments; assurances as to its security; and continued arms sales. Commercial connections between the United States and Taiwan have expanded since the TRA took effect. Taiwan enjoys Export-Import Bank financing, normal trade relations status, and ready access to U.S. markets.

People's Republic of China (PRC) – Hong Kong

Hong Kong has been a Special Administrative Region (SAR) of the PRC since July 1, 1997, and has a population of 7 million, 95 percent of whom are Chinese. According to the U.S. State Department, Hong Kong generally respects the human rights of its citizens, although core issues remain: the limited right of the people to participate in government, violence against women, and worker's rights. Hong Kong maintains a high degree of autonomy, except in the areas of foreign and defense affairs, which are the responsibility of the PRC.

According to the Interagency OPSEC Support Staff Intelligence Threat Handbook, “[t]he United States is a primary intelligence target of China because of the U.S. role as a global super power; its substantial military, political, and economic presence in the Pacific Rim and Asia; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry, who are considered prime intelligence targets by the PRC.” The PRC’s Ministry of State Security (MSS) is the “preeminent civilian intelligence collection agency in China,” and maintains operations in Hong Kong and other Chinese territories. In recent years, the MSS has increased its activities in Hong Kong to operate against pro-democracy elements in the territory; it also uses facilities available in the territory to monitor communications to and from Hong Kong.

The PRC intelligence collection efforts are growing in scale, intensity, and sophistication. It is considered in the counterintelligence community to be one of the most aggressive countries targeting U.S military, political, and economic secrets as well as sensitive U.S. trade secrets and technologies.

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 are to be used 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, administrative judges apply the guidelines 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.

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 the 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 EO 10865 provides that adverse 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

The security concern for Foreign Influence is set out in AG ¶ 7 as follows:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable 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;

(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 a heightened risk of foreign influence or exploitation.

Each of these disqualifying conditions applies. Applicant's compulsory military service, which ended in 1990, and his subsequent mandatory 10-year-commitment to the Egyptian Army reserves, are not indicative of a foreign preference. However, he and his wife, a non-U.S. citizen, maintain close relationships with family members in Egypt and Taiwan. The mere possession of close ties with family members living in these countries 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 potentially result in the compromise of classified information.

The countries in question also must be considered. In particular, the nature of their government, their relationships with the United States and their human rights records are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Applicant's mother and brother are citizens and residents of Egypt, a country with historically good relations with the United States, but also one occupied by terrorist groups and credited with a poor human rights record. With the fall of the Mubarak government, it is still too soon to make any sound predictive assessments about Egypt's political future and economic well-being. Furthermore, Applicant holds a significant property interest in a valuable piece of commercial real estate that also increases his ties to the country and provides another potential source of vulnerability.

Applicant, through his wife, maintains close ties to residents and citizens of Taiwan who also have ties to Hong Kong. The PRC, through assets in Taiwan and Hong Kong, as well as individuals of Chinese ancestry living in the United States, actively engages in acts of industrial, political, military, and economic espionage against the United States. Furthermore, Taiwan, the PRC, and Hong Kong have significant human rights issues. Accordingly, I find a heightened risk exists with respect to Applicant's relationships with foreign family members and foreign financial interests.

The guideline notes several conditions that could mitigate the foreign influence concerns under AG ¶ 8. Three are potentially applicable in this case:

(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, 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.

Mitigating conditions AG ¶¶ 8(a) and (b) apply. Family contacts and ties with persons in a foreign country are not automatically disqualifying, but require an applicant to present evidence in mitigation and extenuation showing he qualifies for access to classified information. Applicant's relationships with his foreign family members cannot be considered casual or infrequent; however, none of Applicant's family members are associated with or dependent on the governments of the countries at issue. As such, it is unlikely that he will be put in the position of having to choose between the interests of his foreign relatives and the interests of the United States.

Applicant has lived in the United States for over 20 years. He has amassed significant financial assets in the United States. Although his interest in the Egypt property is not insignificant, it is not material to his overall net worth. The property does not provide a consistent source of income that is relied on by Applicant, his mother, or brother to meet their respective recurring financial obligations.

Applicant has deep-rooted relationships in the United States. He has built a life with his wife and youngest son in the United States. In addition, he has significant friendships that have evolved from his professional life. In the 20 years Applicant has worked for his employer, many of his professional relationships have grown beyond the limits of professional contacts to familial-type relationships. During the hearing, it became apparent how intertwined the personal and professional lives of his colleagues have become. Applicant's co-workers are his extended family. They have shared many of life's rites of passage and hardships together. Along with the extent of the personal relationships Applicant has developed with his co-workers, the security conscious nature of his work environment is also an important factor in finding mitigation in this case. These relationships root Applicant to the United States in a way that leads me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). I have incorporated my comments into the analysis of the applicable mitigating conditions above. The evidence supports a finding that Applicant does not have divided loyalties between the United States, Egypt, Taiwan, or the PRC and Hong Kong. Based on the evidence, I conclude that Applicant has mitigated the Guideline B concerns raised in this case.

Formal Findings

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

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a.-1.m.:	For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge