



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



In the matter of:)
)
) ISCR Case No. 11-06619
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

02/25/2013

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on July 9, 2010. On July 25, 2012, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant received the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 17, 2012. A notice of hearing was issued on December 20, 2012, scheduling the hearing for February 7, 2013. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection.

Applicant testified and presented Applicant's Exhibits (AX) A through E. I received the transcript (Tr.) on February 19, 2013.

Procedural Issue

The Government, through Department Counsel, requested that I take administrative notice of certain facts with respect to Egypt and Saudi Arabia. Applicant did not object to the documents. A file was labeled Hearing Exhibit I and entered into the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) with the exception of ¶¶ 1.e and 1.i. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant was born in Egypt in October 1963. He was educated in Egypt and received his undergraduate degree, in business administration, in 1985. (Tr. 13) He left Egypt in 1986 to live in Italy and work for his uncle. (Tr. 14) He did not serve in the Egyptian military. In 1992, he came to the United States. He became a naturalized citizen in August 2008. He has not held a security clearance, but he believes he held a position of trust. From 2002 until 2008, he worked for various federal agencies. Applicant has earned many certifications in a specialized area of software application. From 2008 until 2012, Applicant worked for a defense contractor. He currently works as a sub-contractor for a defense contractor. (Tr. 35)

Applicant is married and has three children who are U.S. citizens. Applicant's wife, who was born in Egypt, became a naturalized U.S. citizen in 2008. Applicant and his wife own two homes in the United States. His net worth is approximately \$700,000. (Tr. 49) (AX I) He and his wife have savings accounts in U.S. banks.

Applicant has a brother who is a citizen and resident of Egypt. His brother has a law degree but as a result of poor health, he does not practice law. He is not married. Applicant's brother did not serve in the Egyptian military. Applicant maintains contact by telephone an average of once every one to two months. (Tr. 36)

Applicant's three sisters are citizens and residents of Egypt. They are married and stay at home with their children. Applicant maintains some telephone contact with them. He usually rotates calling his sisters. (Tr. 32)

Applicant's father-in-law is deceased. His mother-in-law is a citizen and resident of Egypt. She visited Applicant and his family last year in the United States. She was accompanied by Applicant's wife's brother. Applicant's wife maintains phone contact with her mother weekly. (Tr. 38)

Applicant's wife's brother and sister, along with their spouses, are citizens and residents of Egypt who work in Saudi Arabia. (Tr. 23) None of them have ever been employed by the Egyptian government.

Applicant purchased a townhome in Egypt in 2003. He sold the home in 2011. The home was valued at \$250,000. He initially opened a bank account in Egypt to deposit the money from the sale of the home to a bank account. He transferred the money to his account in the United States. (AX D) The bank account in Egypt now has a zero balance. (Tr. 45)

Applicant purchased another townhome in Egypt in 2006. The home is currently valued at approximately \$250,000. Applicant is trying to sell the home. (AX A) He has a bank account with a different bank in Egypt because the funds from the eventual sale of the house are required by law to be deposited in an account in an Egyptian bank.

Applicant's last trip to Egypt was in 2008 when his mother died. Before that he visited her annually. (GX 2) When Applicant visited his mother, he would see his siblings. (Tr. 39) Applicant travels on his U.S. passport. He does not have an Egyptian passport. Applicant has no intention to visit Egypt in the future. (Tr. 49)

Applicant is the vice-president of his homeowner's association. He is active in the community. He also is active in various sports activities with his children. (Tr. 31) Applicant explained that none of his relatives know about his work or that he is applying for a security clearance. None of his family members have any connection with the Egyptian government.

Administrative Notice

Egypt is the most populous country in the Arab world and the second-most populous on the African Continent. Egypt is undergoing a historic political transition after a popular revolution which began in January 2011 and forced the resignation of Egyptian President Hosni Mubarak. Although U.S. policy toward Egypt has long been framed as an investment in regional stability in the Middle East, the relationship has now entered a period of profound uncertainty. In the wake of Mubarak's resignation, a Supreme Council of the Armed Forces (SCAF), consisting of military officers in leading positions under Mubarak, exercised executive authority, but is officially ceded power to newly elected president Muhammad Morsi on June 30, 2012. President Morsi has since consolidated power around his administration and a broader network of Muslim Brotherhood supporters at the expense of the military.

In the past, 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. Yet even taking into account their mutual interests and military cooperation, U.S.-Egyptian opportunities for diplomacy may be overshadowed by disruptive trends

that have been unleashed by the “Arab Spring,” allowing for more anti-Americanism, radical Islamist policies, and antipathy towards Israel and sectarianism.

There have been instances of instability and public disorder in areas of Egypt. Recently demonstrations in downtown Cairo, near Tahrir Square turned violent and resulted in numerous deaths and injuries. In the last year, demonstrations have degenerated on several occasions into violent clashes between police and protesters, in some instances resulting in deaths and injuries.

Egypt has suffered from numerous terrorist attacks over the years. Major terrorist attacks, where foreigners have either been killed or kidnapped, have occurred as recently as July 2012. Americans have been the victims of some of these terrorist attacks.

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.

During the uprising in 2011, abuses of power and human rights abuses were rampant and continued after Mubarak’s resignation, Violent clashes with police at demonstrations are a reason for continued concerns. Egypt’s current, ongoing state of flux continues under President Morsi; his November 2012, declarations of broader powers have left the country in a constitutional vacuum.

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, CPVPV and MOI have been accused of harassing, abusing, and detaining citizens and foreigners of both sexes.

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 2001, terrorist attacks. On May 12, 2003, suicide bombers killed 35 people, including nine Americans, at three housing compounds for westerners in Riyadh. In 2004, several terrorists killed, kidnapped, and beheaded Americans. 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.

The Saudi government continues to build and augment its capacity to counter terrorism and extremist ideologies. Between December 2009 and December 2010, Saudi authorities arrested 765 people for involvement in terrorist activities.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching 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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "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. Thus, a decision to deny a security clearance is merely an indication the applicant 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 therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

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.

Three disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “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.” AG ¶ 7(a). In addition, AG ¶ 7(d) states that “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.” AG ¶ 7(e) provides that “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 or foreign influence or exploitation.”

AG ¶¶ 7(a), (7d) 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's mother-in-law is a citizen and resident of Egypt. Applicant's wife's brother and sister, along with their spouses, are citizens and residents of Egypt who are working in Saudi Arabia. Applicant maintains regular contact with his relatives in Egypt.

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, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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 operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided). The Government submitted country summaries of 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. Applicant shares living quarters with his spouse. Applicant maintains a bank account in Egypt. He still owns one townhome that is worth approximately \$250,000.

Applicant's communications with his relatives in Egypt 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's wife maintains a close relationship with her mother. Applicant's mother-in-law has visited him in the United States recently. After considering the totality of Applicant's wife's family ties to as well as each individual tie, I conclude that Applicant's family ties are sufficient to raise an issue of 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 in Egypt.

The mere possession of close family ties with a family member 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).

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 telephone communications with his family living in Egypt are frequent. Applicant's wife maintains communication with her mother and other family members in Egypt and Saudi Arabia. Applicant also acquired real property in Egypt in the form of a townhome and a bank account. The Government produced substantial evidence to raise the issue of foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(d) and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing "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." AG ¶ 8(b).

Under AG ¶ 8(c) "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation" is a mitigating condition.

AG ¶ 8(f) provides additional mitigation if "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 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 spouses’ relationships with relatives who are citizens and residents of Egypt and Saudi Arabia] could create a risk for foreign influence or exploitation.” His frequent contact with his relatives living in Egypt in varying degrees is an objective manifestation of affection and closeness towards his family members and his wife’s family members living in Egypt and Saudi Arabia.

AG ¶ 8(b) has some applicability. Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 1992. He has a home in the United States. His wife and three children are in the United States. He has been employed for many years holding a position of public trust without incident. He does not intend to return to Egypt.

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 Egypt or Saudi Arabia 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 or coercion or exploitation.

AG ¶ 8(f) is not fully applicable. As discussed, Applicant still has a townhome that he purchased in Egypt. Granted, he has a desire to sell the property but that has not been yet accomplished. He is required by Egyptian law to maintain a bank account so that the mortgage money can be directly deposited in an account in Egypt, Thus, he still has a bank account in Egypt. The other home that he purchased has been sold. While he does have a home in the United States and savings accounts in the United States, there is still the monetary tie to Egypt.

Whole-Person Concept

Under the whole-person concept, an 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. An 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant has lived in the United States since 1992. He is a naturalized citizen as is his wife. His son is a U.S. citizen. He has held a position of public trust without incident. Applicant has been successful in his work. He and his wife share a home in the United States.

Applicant and his wife maintain close ties with family members living in Egypt and Saudi Arabia. He purchased two townhomes in Egypt. He has sold one townhome but he has not yet sold the other home. He still has a bank account in Egypt.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Conclusion

In view of all the circumstances presented 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.

Noreen A. Lynch
Administrative Judge