



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



In the matter of:)
)
) ADP Case No. 11-10625
)
)
Applicant for Position of Trust)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

06/19/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the trustworthiness concerns under Guideline E, personal conduct, but failed to mitigate the Government’s trustworthiness concerns under Guideline C, foreign preference, and Guideline B, foreign influence. Applicant’s eligibility for access to sensitive information is denied.

Statement of the Case

On November 23, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines B, C and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 21, 2012, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 8, 2013, and reassigned to me on May 5, 2013. DOHA issued a notice of hearing on May 20, 2013. The case was held as scheduled on June 5, 2013. The Government offered Exhibits (GE) 1 through 4, which were admitted into the record without objection. Applicant testified and offered Exhibits (AE) A through Z, which were admitted into the record without objection. The Defense Office of Hearings and Appeals (DOHA) received the hearing transcript (Tr.) on June 13, 2013.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Egypt. The request is attached to the record as GE 4 and the supporting documents are attached as Hearing Exhibit I. I have taken administrative notice of the facts listed below.

Egypt is the most populous country in the Arab world. In the past, it has been a strategic partner of the United States and the countries have enjoyed a strong friendly relationship. The United States is facing a series of challenges stemming from dramatic changes in Egypt. Its current President, Muhammad Morsi, is part of the Muslim Brotherhood, and it is unclear whether he will choose to cooperate with the United States on some security and economic matters. Analysts are concerned that the Egyptian government may at times act undemocratically, be more confrontational toward Israel, and limit its cooperation with the United States on intelligence and terrorism-related issues.

Political protests and demonstrations have turned violent numerous times in the past year. There are instances of instability, public disorder, and extremist activity in Egypt. Following the revolution of January 2011, the number of criminal incidents has increased throughout the country, including crimes against foreign visitors. This is likely attributable to a reduction in overall police presence and diminished authority of police on the street. In May 2013, the U.S. State Department issued a travel alert to U.S. citizens traveling to or living in Egypt, about the continuing possibility of political and social unrest, incidents of which led to recent violence.

Due to the political climate after the January 2011 revolution, there is a potentially more permissive operating environment for terrorist groups, including Al-Qa'ida, which the U.S. State Department designated a foreign terrorist organization.

Human rights abuses are rampant in Egypt. Violent clashes with police at demonstrations are a continuing concern. Problems also include torture, arbitrary arrests, limits on the judiciary, and restrictions on civil liberties.

Egypt considers all children born to Egyptian fathers to be Egyptian citizens even if the child is not issued an Egyptian birth certificate or passport. Dual nationals residing in Egypt for more than six months require proof of Egyptian citizenship. Male dual

nationals staying in Egypt for more than six months and who have not completed military service must obtain an exemption certificate before they can leave. Individuals who travel to Egypt on their Egyptian passport are normally treated as Egyptian citizens. The ability to provide U.S. consular assistance to those traveling on Egyptian passports is extremely limited.

Findings of Fact

Applicant admitted all of the allegations in the SOR. I incorporated his admissions into the findings of facts. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He was born in Egypt and immigrated to the United States in 1997. He became a naturalized U.S. citizen in 2009. He earned an associate's degree in 2002. He married in 2006. His wife is a naturalized U.S. citizen. They have two daughters, ages four and two. He has worked for his present employer since 2007.¹

Applicant disclosed on his Electronic Questionnaire for Investigations Processing (e-QIP) form dated December 7, 2010, that he was a dual citizen of Egypt and the United States. He held an Egyptian passport, issued to him on August 20, 2008, that expires on August 19, 2015. It was necessary for him to maintain a valid passport before he became a U.S. citizen.²

On July 14, 2011, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. Applicant was aware when he participated in the interview that its purpose was to obtain a trustworthiness determination for a sensitive position. Applicant acknowledged he was a dual citizen of the United States and Egypt. He stated that he maintained his Egyptian citizenship because that is where he was born and because he loves both the United States and Egypt equally. He stated his allegiance lies with the United States because he resides here. He indicated he did not have a conflict of interest between his allegiance to the United States and his rights as an Egyptian citizen. He indicated he is not obligated to travel to Egypt to maintain his citizenship, and he has no obligations to the country of Egypt to maintain his citizenship. He did not hold nor will he seek a public office in Egypt. He has not served in any foreign military or performed service in lieu of a military obligation.³

Applicant stated in his interview that he would not renounce his Egyptian citizenship to maintain a clearance because he loves his birth country. He indicated he would find work in the United States that does not require a clearance. He explained that he held an Egyptian passport only for identification purposes when he is in Egypt. He used his U.S. passport for all foreign travel and stated it is easier to travel with his

¹ Tr. 27; AE A, E.

² Tr. 29, 93; GE 1.

³ Tr. 94, 130-131; GE 3.

U.S. passport than with a foreign passport. He indicated he had not been asked to and he would not relinquish his foreign passport because he is a dual citizen.⁴

Applicant was provided a copy of his subject interview dated July 14, 2011, as was recorded by the OPM investigator. He was directed to read carefully the investigator's summary of the statements he made during his interview. On the last page he was asked to verify the accuracy of the investigator's summary of the interview. He was asked if the report of investigation accurately reflected the information he provided. He answered "no." It asked if it did not accurately reflect the information to explain how the report was not correct. Applicant noted that his father-in-law, and one of his daughter's birthdate was incorrect and one of his brother's job title was incorrect. He noted no other inaccuracies. He agreed and adopted the summary as accurately reflecting his interview. On October 5, 2012, he swore that he read the summary of interview conducted on July 14, 2011, and found the interview to be accurate except for the corrections noted.⁵

Applicant also completed Government Interrogatories on October 5, 2012. He signed and swore that his answers were true and correct. Question 5.e asked: "whether you are willing to destroy, surrender, or invalidate the foreign passport?" Applicant stated: "not willing." Question 5.f asked: "the reason(s) for your answer to Question 5.e." Applicant answered: "Since USA allows dual citizenship." Question 6 stated in bold type instructions for relinquishing a foreign passport. It specifically stated the destruction of the passport must be witnessed by the employer's security officer and a destruction record must be notarized by the security officer and submitted to DOHA with Applicant's response to the Interrogatory. A letter was sent to Applicant's employer from the Department of Defense Consolidated Adjudications Facility (DOD CAF) that stated on January 2, 2013, it had received Applicant's active Egyptian passport. Applicant requested the DOD CAF hold the passport. The DOD CAF explained it was not authorized to hold the passport.⁶ It advised the employer to have Applicant destroy, surrender, or invalidate the passport in the presence of a facility security officer. It further advised the employer of the appropriate procedure and responsibility regarding holding and/or destruction of Applicant's passport.⁷ Question 24 of the Interrogatories stated: "Please make a statement as to your willingness to renounce your Egyptian Citizenship." Applicant wrote: "I am not willing to renounce my Egyptian citizenship since it is my country of origin and the USA allows dual citizenship."⁸

⁴ Tr. 72-89; GE 3.

⁵ Tr. 72.

⁶ AE Z is the letter from DOD CAF to Applicant's employer. It is dated January 2, 2012. The body of the document specifically refers to receiving Applicant's passport on January 2, 2013. It appears there is a typographical error. The correct date is January 2, 2013, which is consistent with the other documents provided, including the SOR and Applicant's answer to the SOR.

⁷ Tr. 30-41; AE Z.

⁸ Tr. 72-89; GE 2.

Applicant surrendered his Egyptian passport to his employer's security officer. The security officer provided a written statement dated January 28, 2013, stating the passport was defaced and it was to be destroyed on February 28, 2013. No further confirmation was provided.⁹

At his hearing, Applicant stated that he has renounced his Egyptian citizenship and he is only a U.S. citizen. He stated he does not intend on trying to become an Egyptian citizen in the future. He stated he has taken no other action to renounce his Egyptian citizenship other than surrendering his passport. He stated that he did not know holding a foreign passport would affect his ability to obtain a clearance. He stated that he learned on November 23, 2012, when he received the SOR that maintaining his Egyptian passport would affect his ability to obtain a clearance. He stated at his hearing: "I did not understand at the time. But right now the clearance is very important to me for my job." He further stated: "when I knew keeping [my] Egyptian passport could affect[] my clearance I surrendered and I destroy[ed] it."¹⁰

Applicant's wife is a dual citizen of Egypt and the United States. She came to the United States as an infant and lived in the United States until she was approximately 12 years old. She became a naturalized U.S. citizen when she was about four years old. She and her family then moved to Saudi Arabia and then Egypt until she moved back to the United States with her parents in 2005. She attended college and works earning a salary of approximately \$93,000. Her parents spend time in both the United States and Egypt. Her parents own a home in the United States. She surrendered her Egyptian passport to Applicant's employer's security officer. An unsigned letter from the security officer was provided indicating the passport was defaced and would be destroyed. No further confirmation was provided. Applicant stated his wife does not intend on obtaining Egyptian citizenship in the future.¹¹

Applicant's two daughters were born in the United States. Applicant told the OPM investigator that he intended on applying for dual citizenship with Egypt for both of his daughters. At his hearing, he stated he does not intend to obtain dual citizenship for his daughters because he has changed his mind.¹²

Applicant acquired real estate in Egypt worth about \$50,000. In his answer to Government Interrogatories he stated the property was purchased in April 2011. In his answer to the SOR, he stated that he mistakenly wrote April 2011 and should have written April 2012. Applicant provided a translated real estate document. It is very difficult to understand the specifics of the foreign document, but it appears the

⁹ Tr. 39-40, 84-86; Answer to SOR; AE C.

¹⁰ Tr.63, 72-89, 94, 115, 124-126.

¹¹ Tr. 29, 44-46, 94, 96-100; AE D.

¹² Tr. 49-50, 94-95, 126-127.

document shows a transaction took place in April 2012. The document specifically stated Applicant's name, religion, that he was an adult, holder of general secondary school degree, that he resided in Egypt and was unemployed. When questioned at his hearing about his residency, Applicant stated that the document's reference to his residency was merely reflecting where he was born. He then stated that the address on the document is where his parents live. The document makes no mention that the place is Applicant's birth place. Another translated document was provided that appears to be a type of title search and is dated December 13, 2012. It is unclear if this date is the final sale date. Applicant indicated he was not sure of the specific dates of the real estate transaction. It appears the transactions took place in 2012 and not 2011. Applicant stated that he was truthful when he provided his answers. The real estate purchase was completed after Applicant completed the e-QIP and after his subject interview with the OPM investigator.¹³

Applicant stated the real estate he owns in Egypt is with a partner. His father provided the money to purchase the property and the property was put in Applicant's name. The property is for sale. When the property is sold, Applicant will receive his share of the proceeds. His partner intends to purchase the property from him. Applicant provided a translated document dated May 27, 2013, that allows his brother to act on his behalf in selling the property. He stated that he began the process of divesting the property at the beginning of 2013.¹⁴

Applicant's parents are citizens and residents of Egypt. When interviewed in 2011, he stated he had contact with his parents two to three times a week. He affirmed this information in his October 5, 2012 Interrogatories. At his hearing, he stated he has reduced his contact with his parents to once a month when he became aware his contact may affect his ability to obtain a clearance. He last visited his parents in Egypt in September 2011. His parents have not visited him in the United States. His mother is a housewife and his father is a retired school supervisor. He stated they were not affiliated with the Egyptian government.¹⁵

Applicant has four sisters and two brothers who are citizens and residents of Egypt. Two sisters are teachers, one is a professor, and one is a physician. He does not know their husbands' occupations. One sister is a widow. At the hearing, Applicant indicated one brother is employed by the Egyptian government as an administrative assistant at a police office. This brother is the one handling the real estate transaction so Applicant has had more frequent contact with him. The other brother is an accountant. In the past, Applicant spoke to his siblings two to three times a week, but stated he now only speaks to them once a year. He spoke to them more often during his

¹³ Tr. 60-62, 70, 101-107, 110-123, 131-136; Answer to SOR.

¹⁴ Tr. 54, 66-71, 115-119, 121 128-136; AE X.

¹⁵ Tr. 40-41, 47-49, 117-118.

father's illness. He reduced his contact with his siblings after he learned it might affect his ability to obtain a clearance.¹⁶

Applicant traveled to Egypt in 2004, 2009, 2010, and 2011. In 2004 and 2009, Applicant traveled alone and visited his siblings and parents. In 2010, he traveled with his wife and daughter to visit his parents and sister. They attended his brother's wedding. He last visited Egypt in 2011 because of his father's poor health and to visit family. Each visit lasted about 20 days.¹⁷

Applicant earns about \$125,000 annually. He and his wife recently purchased a new home for approximately \$550,000. They do not have any delinquent debts. They intend on remaining in the United States. He provided photos of his family.¹⁸

Applicant provided numerous employment achievement certificates and an acceptance letter to attend college beginning in June 2013.¹⁹

Character letters were submitted. They indicate Applicant is respected among his coworkers and management and is dedicated to his work. He is considered helpful, enjoyable to work with, efficient, honest, smart, hardworking, and understanding. He is considered trustworthy.²⁰

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of

¹⁶ Tr. 42, 50-58, 89-92, 108, 127-128.

¹⁷ Tr. 40, 92-92, 119.

¹⁸ Tr. 42-43, 63; AE I, J, Y.

¹⁹ Tr. 64; AE K, L, M, N, O, W.

²⁰ AE P, Q, R, S, T.

human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security."

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 trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern involving foreign preference:

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. I have specifically considered the following:

(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.

Applicant held an Egyptian passport that was to expire in August 2015. Applicant has repeatedly professed himself to be a dual citizen of Egypt and the United States. I find the above disqualifying condition applies.

I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11:

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

Applicant held an Egyptian passport until he surrendered it to his employer. His employer confirmed possession of a defaced passport, and stated it would be destroyed after a certain date. Applicant has complied with the spirit of the requirement under AG ¶ 11(e), and therefore it is applicable. Applicant repeatedly and strongly expressed his commitment to remaining a dual citizen of Egypt and the United States. I did not find his statements credible that he was unaware until he received the SOR that holding dual citizenship would affect his ability to obtain a clearance. Applicant was interviewed by an OPM investigator where he specifically stated he would not renounce his Egyptian citizenship even if it meant he could not obtain a clearance or if his job required him to have one. He stated he would find another job rather than renounce his Egyptian citizenship. Holding a foreign passport is only one indication of foreign preference. His repeated statements are more of a true indication of Applicant's dual citizenship commitment. Applicant indicated by surrendering his passport that this is a renunciation of his citizenship. Although it shows one step he has taken to divest himself of citizenship ties to Egypt, based on the evidence as a whole, and Applicant's relatively recent change of position regarding his commitment to Egypt, there is insufficient evidence to conclude he does not have a foreign preference or that he has expressly renounced his dual citizenship with Egypt. I find the remaining mitigating conditions do not apply.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or

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

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

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;
- (c) 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.

Applicant's wife recently surrendered her Egyptian passport. There is no indication that she has maintained any ties with Egypt. She lives with Applicant and their two children in the United States. I find none of the above disqualifying conditions apply to Applicant's wife.

Applicant traveled to Egypt in the past to visit his family. His parents and six siblings are all citizens and residents of Egypt. After submitting his e-QIP and participating in his background investigation, Applicant acquired property in Egypt worth approximately \$50,000. He stated the property is now for sale.

AG ¶¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Egypt's changing and uncertain political relationship to the United States places a very heavy burden of persuasion on Applicant to demonstrate that his immediate family members in Egypt do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his family members. With its political and social unrest and its negative human rights record, it is conceivable that Egypt would target any citizen in an attempt to gather information from the United States.

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, we know 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 United States, 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 United States. 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).

Based on the citizenship and place of residence of Applicant's parents and siblings who are citizens and residents of Egypt, the contact Applicant has maintained with them in the past, the political uncertainty of Egypt's relationship to the United States, terrorist activities in Egypt, and its questionable human rights record, I conclude that the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b) are established by substantial evidence. Thus, the "heavy burden" of mitigating the facts is shifted to Applicant.

Applicant owns property in Egypt. He is attempting to sell it, but at present he maintains a significant financial interest in Egypt. AG ¶ 7(e) applies.

I have also analyzed all of the facts and considered all of the mitigating conditions for this trustworthiness determination under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests;

(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; 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.

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. Applicant has maintained regular contact with his parents and siblings and communicated with them regularly until he recently became aware it might be a concern. He visited them in 2011, 2010, 2009, and 2004. Egypt's relationship with the United States is changing due to the new government. There are active terrorist organizations within Egypt that target westerners. The government also has a questionable human rights record. Applicant has a very heavy burden of persuasion to demonstrate that his family ties in Egypt do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the U.S. and his family members. Applicant has not met that burden. I find mitigating condition AG ¶ 8(a) does not apply.

Applicant failed to establish there is no conflict of interest because his relationship and loyalties to the United States is so deep and longstanding or his loyalty to Egypt is so minimal, that he can be expected to resolve a conflict in favor of U.S. interests. As recently as October 5, 2012, Applicant affirmed his commitment to being a dual citizen and that he loved both countries equally. Although he recently surrendered his Egyptian passport, it does not negate his present and past contacts and actions regarding his commitment to Egypt. He maintains a financial interest in Egypt. I find AG ¶ 8(b) does not apply.

Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant recently reduced communication with his Egyptian relatives due to clearance concerns. However, his history shows he had regular contact with his family

and continues contact with his parents in Egypt. These contacts are not casual and infrequent. I find mitigating condition AG ¶ 8(c) does not apply.

Applicant owns property in the United States and most of his assets are in the United States. He also owns property in Egypt worth approximately \$50,000. He is attempting to sell the property, but it has not yet occurred. The value of the property is significant. Applicant has not established it is unlikely that there could be a conflict and it could not be used to influence, manipulate, or pressure him. I find mitigating condition AG ¶ 8(f) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 sets out the security concern relating to Personal Conduct.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

At the time Applicant provided a statement to the OPM investigator in July 2011, he had not yet purchased property in Egypt. In Interrogatories provided after his interview, he indicated he had purchased property in Egypt. He mistakenly wrote that the property was purchased in 2011 when in fact it had been purchased in 2012. Applicant provided sufficient documentary proof to show the transaction took place in 2012. I find Applicant did not deliberately provide false or misleading information concerning his real estate transaction. I find no disqualifying conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have incorporated my comments under Guidelines B, C and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered all of Applicant's character evidence and employment history. Applicant's statements to the OPM investigator and affirmation of his dual citizenship status after submitting his clearance documents are strong evidence of his allegiance to Egypt. His recent surrender of his Egyptian passport and verbal renunciation of his Egyptian citizenship does not negate his past statements. Although he stated his allegiance is to the United States, he also is equally committed to his country of birth. Applicant clearly has split loyalties. He stated his recent actions were motivated by his hope to obtain a clearance that he needs for his job. He previously stated he would not renounce his dual citizenship status even if it meant he had to change jobs. Applicant has significant and close family ties to Egypt that raise concerns. The evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising under the foreign preference and foreign influence guidelines. He mitigated the concerns under the personal conduct guideline.

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 1.a:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraph 1.a:

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 public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge