



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



In the matter of: )  
)  
) ISCR No. 12-01295  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

10/16/2014

**Decision**

DAM, Shari, Administrative Judge:

In 1959 Applicant was born in Egypt. In 2003 he became a U.S. naturalized citizen. His spouse and son are U.S. naturalized citizens and residents. All three of them hold dual citizenship with Egypt. One of his brothers is a dual citizen of the United States and Egypt, residing here. Applicant has a brother and sister, who are citizens and residents of Egypt. He has several in-laws who are citizens and residents of Egypt. Two brothers-in-law and one sister-in-law work for the Egyptian government. Applicant has a financial interest in real estate in Egypt. He produced insufficient evidence to mitigate the foreign influence security concerns. Access to classified information is denied.

**Statement of the Case**

On April 1, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 7, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence). (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 on September 1, 2006. The SOR detailed reasons why DOD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on November 26, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on July 24, 2014. A complete copy of the File of Relevant Material (FORM) containing seven Government Items was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on August 1, 2014, and returned it to the Defense Office of Hearings and Appeals (DOHA). He subsequently submitted four documents that I marked Applicant Exhibits (AE) A to D, and admitted into the record without objection from Department Counsel. DOHA assigned the case to me on September 12, 2014.

### **Procedural Ruling**

Department Counsel requested administrative notice of facts concerning Egypt. (FORM.) Counsel provided supporting documents to show detail and context for those facts. (Item 7.) Applicant did not object to these documents and Department Counsel's request was granted.

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

### **Findings of Fact**

Applicant admitted all facts alleged in Paragraph 1 of the SOR, except those contained in Paragraph 1.g. His admissions are incorporated into the following findings of fact. (Item 3.)

Applicant was born in Egypt in 1959. He earned a bachelor's degree in electrical engineering from an Egyptian university in June 1983. He was conscripted into the

Egyptian Air Force from October 1983 to March 1986. He became a naturalized U.S. citizen in February 2003.<sup>1</sup> (Item 5.)

From December 2000 to July 2002, Applicant worked for a U.S. private engineering firm. He was unemployed from August 2002 to February 2003, when he obtained a position with another engineering firm. He worked for that firm until April 2008, and then moved to another company for a couple months. Since September 2008 Applicant has worked as an electrical engineer for a defense contractor. (Item 4.) On April 1, 2011, Applicant submitted his first e-QIP. On August 21, 2014, Applicant's employer destroyed his expired Egyptian passport. (AE B.)

Applicant's parents were born in Egypt and are now deceased. They were citizens and residents of Egypt. He has three brothers and one sister, all of whom were born and raised in Egypt. One brother is deceased. That brother's wife (Applicant's sister-in-law) is a professor at an Egyptian university. Applicant's second brother is a naturalized U.S. citizen and resident since 1995; he holds dual citizenship with Egypt. His third brother is a citizen and resident of Egypt, working as an accountant for a private hospital. This brother's wife worked for the Egyptian embassy in Tunisia for two years. She now works for the embassy in Egypt. (Item 5, AE D.) Applicant's only sister is a citizen and resident of Egypt. She and her husband are retired engineers. (Item 3.) Applicant calls his sister and brother in Egypt once a month. (Item 5.)

Applicant's wife was born in Egypt. They married in 1989 while living in Egypt. She is a naturalized U.S. citizen residing with Applicant, and has dual citizenship with Egypt. They have two children. One was born in Egypt. He is a naturalized U.S. citizen, and holds dual citizenship with Egypt. The other child was born in the United States. (Item 4.)

Applicant's mother-in-law and father-in-law are deceased. They were citizens and residents of Egypt. Applicant's wife has three brothers, all of whom are citizens of Egypt. One of Applicant's brothers-in-law is an accountant working for an Egyptian governmental agency. Another brother-in-law is an accountant with an Egyptian government department store; his wife works for a travel agency. The third brother-in-law is a physician, as is his wife. They reside in Oman. Applicant speaks to his in-laws once or twice a year. His wife speaks to them more frequently. (Item 5.)

Applicant visited his family in Egypt in 2003 and 2004. None of his foreign-resident family members has visited the United States, except his mother-in-law who is now deceased. (Item 5.)

Applicant and his siblings own six apartment buildings in Egypt, which they inherited from their father. (Item 5.) He estimated that his share was approximately \$20,000 in 2011, but is currently worth about \$10,000, as a result of a decrease in the

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<sup>1</sup> The record does not contain the date Applicant and his immediate family arrived in the United States, or under what type of visa. In his e-QIP, Applicant recorded that he has held dual citizenship with the United States and Egypt since 1997. The basis for that statement is not clear. (Item 4.)

value of real estate in Egypt over the past couple years. He said he is financially stable in the United States and that the \$10,000 share of ownership has little effect on his financial situation. He did not elaborate on the extent of his financial or real property interests in the United States. (Item 3.)

During an interview with a government investigator in April 2011, Applicant said that his allegiance is to the United States. He would be willing to renounce his Egyptian citizenship if necessary for employment, but would prefer not to do that. He explained that any loyalty he feels to Egypt is based on his family there and memories with them. (Item 3.) In his November 2013 answer to the SOR, he said he is willing to renounce and relinquish his Egyptian citizenship. He asserted that the potential for pressure or coercion based on his connections to Egypt could not change his loyalty to the United States. (Item 3.)

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

I took administrative notice of the facts set forth in the Administrative Notice documents (FORM) concerning Egypt, which are incorporated herein by reference. Of particular significance is Egypt's current state of crisis politically and economically. Since 2013 terrorism and violence have increased. There is little indication that the situation is improving. Although the current military leadership has attempted to contain the various terrorist organizations operating in the country, including the Muslim Brotherhood, conflicts and attacks are rampant. Egypt's record of human rights violations is poor. The U.S. State Department has issued travel warnings to the country because of ongoing threats to U.S. citizens and its interests, including kidnappings and mob protests.

### **Policies**

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern pertaining to foreign influence 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.

AG ¶ 7 sets out four conditions that could raise a security concern and may be disqualifying in this case:

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

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

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

AG ¶ 7(a) requires the presence of family members (or business or professional associates, friends, or other persons), who are citizens and/or residents of a foreign nation, and substantial evidence of a heightened risk. Applicant's brother, sister, and four in-laws are citizens and residents of Egypt. One brother-in-law is a citizen of Egypt and resident of Oman. The heightened risk required to raise one of the 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 or substantial assets in a foreign nation. Egypt is a country known to have terrorism problems that are aimed against U.S. citizens and their connections. Egypt also engages in human right abuses. These factors create a heightened risk. The evidence is sufficient to raise AG ¶ 7(a) with respect to Applicant's relatives living in Egypt.

Applicant's sister-in-law and two brothers-in-law work for the Egyptian government. One sister-in-law works for an Egyptian university. Those connections also raise a heightened risk through family ties and could create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help those family members by providing that information. AG ¶ 7(b) applies.

Applicant's wife and son are dual citizens of the United States and Egypt, residing with him. He and his wife maintain close contact with family members in Egypt. The evidence supports the application of AG ¶ 7(d).

Applicant has a financial interest in six apartment buildings in Egypt. Those apartments may have a worth between \$10,000 and \$20,000. Given Egypt's current political situation and anti-Western climate, his financial asset in Egypt raises a security concern under AG ¶ 7(e).

Applicant's regular and close contacts, relationships, and connections with Egypt shift the burden to him to prove mitigation. AG ¶ 8 lists four conditions that could mitigate those foreign influence security concerns. Those with potential application are:

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

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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and count not be used effectively to influence, manipulate, or pressure the individual.

Applicant has a strong emotional bond with his sister and two brothers who are citizens of Egypt, of which two are residents. He demonstrated his affections for them by regular and ongoing contact with them over the years, which cannot be construed as casual. He also has shown a level of bond with his in-laws who reside there. While Applicant's loyalty and close relationship to his family are positive character traits, those relationships raise security concerns under this guideline. He 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 family members, who might be pressured or coerced by terrorists or other governmental entities in Egypt for classified information. The fact that four in-laws work for the Egyptian government or a university there further negates the application of these mitigating conditions. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and 8(c).

The evidence establishes some mitigation under AG ¶ 8(b). Applicant provided evidence of longstanding relationships to the United States since becoming a U.S. citizen in 2003. He has been employed by various U.S. companies since 2002. His spouse and two children are U.S. citizens and residents. His brother is a naturalized U.S. citizen and resident. He has some U.S. financial assets, however the amount is unknown. He did not provide sufficient evidence to establish mitigation under AG ¶ 8(f), as to his financial interest in Egypt versus his assets in the United States.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are facts supporting mitigation of the raised security concerns. Applicant became a U.S. citizen in 2003. His wife, two children, and brother are citizens and residents of the United States. He has a history of working for U.S. companies. He has some financial assets in the United States.

The circumstances tending to support denial of Applicant's security clearance are more significant than the facts weighing toward approval of his security clearance. Applicant, his wife, and son hold dual citizenship with Egypt. Applicant's two siblings and five in-laws are citizens of Egypt. Four of them are residents of Egypt. Applicant has sufficiently frequent and ongoing contact with those family members, indicating a commitment to them and their welfare. Applicant's family in Egypt creates a heightened risk to exploitation, manipulation, pressure, or coercion. Of particular significance is Applicant's statement in April 2011 that he preferred not to renounce his Egyptian citizenship because of family members living there and a history of memories. His subsequent assertion in November 2013 that he would renounce his citizenship raises credibility issues.

Overall, the record contains insufficient evidence that documents Applicant's deep connections to the United States or explains in greater detail his connections with Egypt. Seemingly, he and his immediate family members prefer to maintain dual citizenship with the Egypt, despite having obtained U.S. citizenship over ten years ago. The totality of the record evidence leaves me with substantial doubts as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence.



## **Formal Findings**

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

Paragraph 1, Guideline B:                   AGAINST APPLICANT

Subparagraphs 1.a – 1.k:                   Against Applicant

## **Conclusion**

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

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SHARI DAM  
Administrative Judge