



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 12-04312

Appearances

For Government: Fahryn Hoffman, Esq.
For Applicant: *Pro se*

10/08/2014

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on October 22, 2011. On October 1, 2013, 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 August 12, 2014. A notice of hearing was issued on August 22, 2014, scheduling the hearing for September 26, 2014. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection.

Applicant testified and presented Applicant's Exhibits (AX) A through I, which were admitted without objection. I received the transcript (Tr.) on October 3, 2014.

Procedural Issue

Department Counsel requested that I take administrative notice of certain facts regarding Egypt. Applicant did not object, and the documents proffered in support of the request was labeled Hearing Exhibit I and entered into the record. Applicant also requested that I take administrative notice of certain facts with respect to Egypt. The document was entered into the record without objection as Hearing Exhibit II.

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.a, 1.c, 1.k, and 1.l. He provided additional information to support his response. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant was born in Egypt in February 1954. He was educated in Egypt, receiving his undergraduate degree in June 1982. (GX 1) In 1960, Applicant accompanied his father to the United States. He returned to Egypt in 1967, but he traveled to the United States on many occasions before he returned in October 1984 to live permanently in the United States. He became a naturalized citizen in July 2011. He has not held a security clearance. From the early 1990's until the present, Applicant has served various government agencies as a contract language translator/interpreter. (AX D) He currently works as a contract interpreter for a U.S. center of studies. (Tr. 29)

Applicant married his first wife in 1984, but explained that she died in 2009. His first wife was born in the United States and was a U.S. citizen. (Tr. 98) They had no children from that marriage. Applicant learned that his wife had not properly filed their income tax returns. He had relied on her to file the tax returns each year since she was familiar with the system. (Tr. 47) The issue was resolved in 2010. As a result, this delayed his naturalization until 2011. Applicant disclosed the information when he completed his security clearance application. (GX 1)

In May 2010, Applicant remarried. His second wife is an Egyptian citizen, and she has a permanent resident status in the United States. She applied for U.S. citizenship in September 2014. (AX B-C) She lives with Applicant in the United States. As a result of his second marriage, Applicant now has a step-daughter (not a step-son as alleged in SOR 1.c) who resides in the United States, but is a citizen of Egypt. (Tr. 77) His step-daughter has lived in the United States for about four years. She works for a U.S. company. She currently has a special visa that allows her to work and live in the United States. (Tr. 81) She wants to remain close to her mother (Applicant's wife) who now lives in the United States. Applicant believes that she will apply for U.S. citizenship. Applicant has another step-daughter who is a citizen of Egypt. She lived in the United States since 2007 for her graduate studies. When her visa expired, she was required to

return to Egypt. (Tr. 98) She works for a private international company. She has never been affiliated with the Egyptian government. She has a desire to return to the United States permanently, especially since her mother is now in the United States. (AX A)

Applicant has a brother who is a dual U.S.-Egyptian citizen and resides in Egypt. His brother is a professional musician and film screenwriter. He was born in the United States, but in 1967 returned to Egypt with his parents. He has never been employed by the Egyptian government, nor has he served in the Egyptian military. He has visited the United States on multiple occasions and is now actively pursuing the possibility of returning to the United States, his country of birth. (Tr. 92) Applicant maintains contact by telephone an average of once every one to three months. (AX A)

Applicant also has a sister who is a dual U.S.-Egyptian citizen who resides in Egypt. She is 49 years old and is a professional film editor. She was also born in the United States and holds a U.S. passport. She returned to Egypt with her parents in 1967. She is not employed by the Egyptian government. She has visited the United States on several occasions. Due to the current turmoil in Egypt, she has been actively pursuing the possibility of returning to the United States to live permanently. Applicant communicates by telephone or e-mails once every three months. (AX A)

Applicant has another sister who is a citizen and resident of Egypt. She is a 54-year-old advertising executive. She came to the United States when she was four months old. She went to school while she was in the United States. In 1967, she returned with her parents to Egypt. She was educated in English-speaking schools in Egypt. Applicant's sister attended an American university in Egypt. She studied in the United States as part of a student exchange program. She works for an international firm. She has no affiliation with the Egyptian government. She has asked Applicant to sponsor her application for U.S. permanent residence. (Tr. 86) Applicant has limited communication with his sister. She has visited the United States on various occasions, and they talk by telephone once every three months.

Applicant's mother is deceased. (GX 2) His mother-in-law is a citizen and resident of Egypt. She is a 71-year-old retiree. She has no connection to the Egyptian government. Applicant has only seen her three or four times. He does not maintain contact with her. He recalls that in 2011, he had a telephonic communication to wish her a Happy New Year.

Applicant has a friend who is a counselor at the Egyptian Supreme Court. Applicant met him when the friend was part of an Egyptian delegation taking a course at an American university. Applicant was asked to give the Egyptian counselor English instruction. They became friends and over the years saw each other in the United States. Applicant has minimal contact with his friend when he is in Egypt. This occurs by telephone three times a year for holiday greetings. Applicant's friend has never served in the Egyptian military. Their contact and conversations are consultations about language terminology and phraseology. (Tr. 89)

Applicant's brother-in-law is a citizen and resident of Egypt. He is a physician with a private practice. Applicant does not maintain connections with him. (Tr. 87) He has seen him about four times. One occasion was at the funeral for Applicant's mother in 2011. Applicant's brother-in-law has never had any involvement with the Egyptian government.

Applicant and his wife do not own a home in the United States, but they are saving to purchase a home. Applicant explained that his wife is an ophthalmologist, but has had difficulty finding work in the United States. They have bank accounts in the United States. Applicant's earnings vary due to the nature of the contract work. He estimates that he earns about \$80,000. (Tr. 63) His wife recently found employment in the medical field. He believes she earns about \$40,000. Neither Applicant, nor his wife, has any foreign investment accounts. Applicant estimates that his net worth is about \$120,000.

Applicant's wife owns a share in a family home in Egypt. The estimated value of the share is about \$70,000. (Tr. 67) She also owns a share in a family apartment in Egypt. The estimated value is about \$125,000. (Tr. 71) The property values are subject to decline due to the political and economic situation in Egypt. When her mother dies, she will share the inheritance with her siblings. Under Egyptian law, she will receive a reduced share due to her status as a woman. She plans to use her share to help buy a home in the United States.

Applicant presented numerous letters of recommendation from judges who commended him on his highly professional manner when he performed as a lead court interpreter in a series of high level trials. The judges commented favorably on his demeanor and attitude. (AX E) Applicant worked under stressful and difficult conditions over a period of months, and was praised for his excellent service under duress. He was chosen as lead court reporter for these cases from 1993 until 2001. He had access to sensitive information during this time. Applicant noted that he has already been at risk for physical harm due to his work with the U.S. Government, and having been in direct contact with defendants on trial. (Tr. 33)

Applicant also submitted letters from his current employer who has known Applicant for about nine years. Applicant's ability, professionalism, and dedication to duty as a simultaneous interpreter is highly praised. Applicant has furthered the mission of outreach for the center and has established a "community of influence" in the region. (AX E)

The deputy director of the center, who is a retired colonel has known Applicant since 2003. He states that Applicant is invaluable when dealing with policy planners from over 26 countries. He undertakes his responsibilities with great enthusiasm and develops a strong rapport with seminar participants and professors.

During the trials Applicant was entrusted with a multitude of classified information in closed hearing situations. He also worked in another court system in trials connected

with extremist elements who work against the United States. (Tr. 31) Applicant, by the nature of his work, deals with national security professionals, diplomatic officers and military intelligence from Arab-speaking countries. He hopes to build a better understanding and trust in the collective effort to combat trans-national terrorists and violent extremist threats around the world. (Tr. 32)

Applicant noted that he does not have a valid Egyptian passport. (Tr. 106) He surrendered the passport to the Egyptian Consulate in March 2012. (GX 2) He has a U.S. passport. He traveled to Egypt in 2013 and used his U.S. passport.

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 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. On July 3, 2013, the Egyptian military ousted President Morsi from power. In mid-August, the army-backed government, which has ruled Egypt since the July 3 ouster began a violent crackdown against Morsi's mostly Islamist supporters, and arrested many leaders and members of the Muslim Brotherhood. On August 14, 2013, the Government of Egypt declared a State of Emergency.

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. The government continues to build and augment its capacity to counter terrorism and extremist ideologies.

Egypt is a country in transitional turmoil. However, Egypt has been a staunch ally of the United States since the time of Anwar Sadat and the Peace Treaty with Israel in the 1970's.

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 (brother and two sisters) who are living in Egypt, as well as by his wife’s property interests in Egypt. Applicant shares living quarters with his spouse. Applicant’s wife maintains contact with her mother and her two daughters. Applicant’s mother-in-law is a citizen and resident of Egypt. Applicant’s wife’s two daughters are citizens of Egypt, and her brother is a citizen and resident of Egypt. Applicant has a friend who is a citizen and resident of 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. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Egypt 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’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 and her two daughters. After considering the totality of Applicant’s wife’s family ties, 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 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 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 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 once every three months. Applicant's wife maintains communication with her mother and other family members in Egypt. Applicant's wife owns a share of real property in Egypt in the form of a home and apartment. The Government produced substantial evidence to raise the potential 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(b), and 8(f) are applicable. Applicant's mother is deceased. Applicant has no children of his own in Egypt. He has two sisters and a brother living in

Egypt, but only one is not a U.S. citizen. They would all like to live in the United States. Applicant has one friend with whom he maintains some contact with when he is in the United States. This contact was made through his work as a translator. Applicant does have some telephone contact with his siblings during the year. Applicant's wife is in the process of becoming a U.S. citizen. Her mother lives in Egypt. Her one daughter lives and works in the United States. Her other daughter would like to return to the United States after having studied here. Applicant has minimal contact with his wife's family. 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.

AG ¶ 8(b) is applicable. Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 1984. He has excellent references and put himself under stressful situations to serve as a lead court reporter for the court system in high level trials. He has spent 25 years working with various agencies as a translator. Through his work and service to the U.S. government, he has shown that he can handle sensitive material under duress. His wife is in the process of becoming a U.S. citizen. She has one daughter who lives and works in the United States. Her other daughter studied and lived in the United States for a number of years. Applicant's wife intends to reside in the United States with Applicant. She wants to work in the United States and does not want to live in Egypt.

AG ¶ 8(f) is partially applicable. As discussed, Applicant's wife has a family share in real property in Egypt. She will inherit the property when her mother dies. This will be shared with her siblings. Applicant's wife will use that money to help buy a home with Applicant in the United States. In addition, the real value of the property is in decline because of the turmoil in Egypt at this time.

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

Conclusion

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

Noreen A. Lynch
Administrative Judge