



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-01445

Appearances

For Government: Candace Garcia, Esq.
For Applicant: Jacob T. Ranish, Esq.

12/19/2016

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on September 19, 2012. On September 23, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline B and Guideline C. 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 June 6, 2016. A notice of hearing was issued on August 1, 2016, scheduling the hearing for November 03, 2016. Government

Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I received the transcript (Tr.) on November 14, 2016.

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 were labeled Hearing Exhibit I and entered into the record. Applicant provided documents for Administrative notice as well. Department Counsel objected to one document, but I admitted it, giving proper weight to the non-governmental document.

Findings of Fact

In her answer to the SOR, Applicant admitted the sole factual allegation in the SOR under Guideline C (Foreign Preference). She denied the factual allegations under Guideline B (Foreign Influence) with the exception of SOR 2.f.¹ She provided additional information to support her response. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant was born in Egypt in June 1990. She left Egypt in 2001 with her biological mother and her sister at the age of 12. Her biological father remained in Egypt as a result of divorce from Applicant's mother. She graduated from high school in the United States in 2008. She received her undergraduate degree in 2012. (GX 1) She is attending graduate school at the present time. Applicant has lived with her mother, stepfather, sister, and stepbrother since coming to the United States. Her mother is a naturalized U.S. citizen and her step-father is an American. Applicant became a naturalized U.S. citizen in 2010. (GX 1)

Applicant is a senior consultant for a defense contractor. She has been with her current employer for about three years. She has won multiple awards while employed. She has worked in the defense field since graduating from college. She just recently received a significant award for her outstanding performance. (AX E) She has not previously held a security clearance. (Tr. 53)

Applicant is single and has no children. She volunteers with a local community organization to help children with disabilities. She also sponsors a child from a disadvantaged background. She helps financially and mentors her online. She has been involved in this project for a number of years. (Tr.18)

Applicant's biological father lives in Egypt as an Egyptian citizen. He is a Professor at a university. He spent four years in Libya teaching, but he does not reside there. He remarried after the divorce from Applicant's mother. Applicant spent the first six years of her life with her biological father and mother. After the divorce, she lived

¹ At the hearing, Department Counsel made a Motion to Amend the SOR to reflect that Applicant's biological father was not living in Libya to conform to the evidence of record. The SOR was amended.

with her mother and sister in Egypt until arriving in the United States. Her biological father had visiting rights provided by the court and she saw him on weekends when she still lived in Egypt. She had no contact with him when she left Egypt for about four years. Applicant stated that her father was abusive. She does not love him. She considers her stepfather her real father. Her biological mother has not communicated with her biological father since the divorce. (Tr. 64) She acknowledged that her biological father calls her on her birthday once a year. She regards her relationship with him "as professional." She has no relationship with his wife. Applicant learned that she has two half siblings after a number of years. (Tr. 57) She has no desire for a close relationship with him. She sometimes has social media contact with her half-siblings. (Tr. 30) None of them know the nature of her work or the request for a security clearance.

At the time that Applicant completed her security clearance application in 2012, she had listed two friends who lived in Egypt. She has grown apart from them. One is married to an American citizen and the other she sometimes sees when she visits Egypt. The nature of the relationship with both friends has changed to a distant one. (Tr. 33)

Applicant has no property in Egypt. She has no bank account or investments in the country. Her biological mother owns an apartment in Egypt. Applicant and her mother have visited Egypt several summers and have stayed in that apartment. (Tr.46) They traveled in 2005, 2010-2011, and 2015. Applicant acknowledged that her biological father has had contact with her when she visits Egypt. She never stays with him, but he talks with her when she is in Egypt. She speaks to him once a year on the phone. He never sends her money or presents. (Tr. 48) He has never visited Applicant in the United States. Applicant believes that her father is trying to fix the father-daughter relationship, but it has never worked. She has no desire for any relationship with him. She did not know much about her father's work as she has no interest in him. She stated that she has no affection for him. (Tr. 65) She acknowledged that she has seen him about three times over the past years.

Applicant earns about \$75,400 a year. She has \$39,000 in savings in the United States. She is only 26, but she has already invested in her retirement savings account. She has no debt other than a car note. (AX C)

Applicant submitted six affidavits and letters of reference. She has spent her life in the United States, living with her mother and stepfather, since she was 12. She received her education in the United States. She is a naturalized U.S. citizen. Her immediate family are U.S. citizens and live in the United States. Her biological father has no real part in her life.

Her American stepfather states that she is very ethical. He has watched her grow up in his home. She is a smart and rational person who separates work from the personal. She is not gullible, and often talks about the appreciation for an American life. (AX G)

Applicant's mother stated that she has found a real father figure with her stepfather who raised her. She has no doubt about her daughter's allegiance to the United States. She has become critical and distant to the Egyptian culture. Applicant refuses to have a relationship with multiple Egyptian men due to the fact that they do not share her preference for the United States. (AX G)

One of Applicant's colleagues, who has known her for four years, attests to her trustworthiness and dependability. He has a security clearance and he recommends her for a security clearance. Other colleagues or managers state, after reviewing the SOR, that they have no reservations about Applicant. She is recognized as one of the best resources in the company. She is a hard worker and dedicated to government service. (AX G)

Foreign Preference

Applicant does not have a valid Egyptian passport. (GX 1) Her Egyptian passport expired in 2009. She has a U.S. passport. She traveled to Egypt and used her U.S. passport. There was much discussion about the fact that Applicant did not formally renounce her Egyptian citizenship, however she completed a dual-citizen loyalty agreement that states if she is still an Egyptian citizen, she will renounce. Also she does not consider herself an Egyptian citizen because she contacted the Egyptian Embassy in the United States and was told to complete a form if she wanted to be considered an Egyptian citizen. She did not complete the form. (Tr. 25)

Applicant voted in the 2012 Egyptian election. She has never voted in any other Egyptian election since coming to the United States. This election was of such import, she felt compelled to register her vote in a democratic election. (Tr. 21) Applicant went to the Egyptian Embassy in Washington, DC to cast her vote. Applicant understood that this was an historic moment for Egypt. (Tr. 22) She believed that this election was a milestone and a clear direction for the country. She felt it was the right thing to do. Applicant voted not for any preference for Egypt but for the significance of the democratic process. She has no intention of voting in an Egyptian election again. (Tr. 24) Applicant has voted in local, state and national U.S. elections since becoming a U.S. citizen.

Although the United States did not condone the fact that Applicant voted in the 2012 Egyptian election, the U.S. Government was certainly enthusiastic about the election and many government entities lauded the election. (AX A and B)

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 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. Egypt is now mainly under the control of an interim government managed by the military. 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.

Two 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(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) and 7(e) are raised by Applicant’s distant relationship with her biological father who lives in Egypt. Applicant has a half-sister and a half-brother, who are the children of her biological father’s second marriage. She has some social media contact with the two children.

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 her distant relationship with her biological father and his second family living in Egypt does not pose a security risk. Applicant should not be placed in a position where she might be forced to choose between loyalty to the United States and a desire to assist those relatives residing in Egypt.

I conclude that Applicant’s ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. This relationship with her biological father and his second family in Egypt creates a concern about Applicant’s “obligation to protect sensitive information or technology” and her desire to help them.

The mere possession of close ties with a family member in Egypt 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, terrorists, or criminals from Egypt seek or have sought classified or economic information from or through Applicant or her biological father, it is not possible to rule out such a possibility in the future. Applicant’s mother owns an apartment in Egypt. The Government produced substantial evidence to raise the potential of foreign pressure or attempted exploitation. AG ¶¶ 7(a) 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).

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.” Applicant’s mother has an apartment in Egypt, but Applicant has no financial interests in Egypt.

AG ¶¶ 8(a), 8(b), and 8(f) are applicable. Applicant has a distant, limited relationship with her biological father and his second family. She does not love him. Applicant has no other family in Egypt. Applicant does have telephone contact once a year. She has seen her father and her half-siblings when she has visited Egypt. 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. Normally, there is a presumption of a bond or affection for a family member, but in this case, Applicant has negated that assumption. This level of the relationship makes the possibility of Applicant having to choose between her family in Egypt quite unlikely.

AG ¶ 8(b) is applicable. Applicant expressed her loyalty to the United States. She is a naturalized citizen who has lived and worked in the U.S. since 2001. Egypt is an ally of the United States with mutual defense and strategic interests. Egypt is a substantial trading partner of the United States and cooperates with the United States on many military matters. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. I have also considered the ongoing situation in Egypt with an unstable government, extensive terrorist activities, and human rights issues. Even though Egypt is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that the situation and groups in Egypt could take an action that may jeopardize their friendly position with the United States. There are some indications that elements in Egypt could seek sensitive information from their citizens who have family in the United States.

Applicant has strong ties to the United States. She came to the United States with her mother and sister at the age of 12. Her parents divorced and she did not have any contact with her biological father for many years. She is a naturalized citizen who received her education in the United States. Her family, life and profession are in the

United States. She has no desire to leave the United States. She has firm ties to the United States and considers it her home. She embraced the culture, history and lifestyle of the United States.

Applicant's loyalty to the United States is such that she can be expected to resolve any conflict of interest in favor of the United States interest. There is no risk to the national interest if Applicant has access to classified information. Applicant has met her heavy burden to show that her biological father and his second family living in Egypt does not cause a security concern.

Guideline C, Foreign Preference

The security concern under this guideline is set out in AG ¶ 9:

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.

Under AG ¶10, the following disqualifying condition is relevant:

(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: . . . (7) voting in a foreign election.

In 2012, Applicant voted in the Egyptian presidential election. She testified that this was such a rare moment in history that he wanted to show her support for the democratic process. She voted in the Egyptian Embassy in the United States. Applicant voted to support the opposition, as a way to institute change and to encourage democracy and to improve relations with the United States. She did not have a security clearance at the time. She has no intention of voting in any other Egyptian elections. She votes in U.S. elections.

None of the mitigating conditions listed under AG ¶11 specifically apply to disqualifying condition AG¶ 10(a)(7). However, Applicant's history and conduct show that she is unlikely to make decisions that would harm the United States. On the contrary, she has spent her whole adult life in the United States with her immediate family, basically estranged from her biological father. Applicant's voting did not express a preference for Egypt, but showed her opposition to the current regime. At the end of the hearing Department counsel conceded that the concern under foreign preference has been mitigated.

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 Guidelines B and C 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 substantial facts supporting mitigation of security concerns. Applicant has lived in the United States since 2001 with her mother, sister and stepfather who raised her. She is a naturalized citizen who has been educated in the United States. She is employed and has submitted letters of recommendation. She would resolve any issues in favor of the United States.

Applicant was candid about her biological father living in Egypt. She does not love him and has little contact with him. However, he will always be her biological father.

Applicant voted in an historic election in 2012. She believed it was the right thing to do. The United States did not condone such a vote, but was enthusiastic about the election. She does not plan to vote in any other Egyptian elections. Applicant votes in U.S. elections.

After weighing the disqualifying and mitigating conditions under Guideline B, and Guideline C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude she has carried her 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 C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline B, FOR APPLICANT

Subparagraphs 2.a-2.f: For Applicant

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