



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-03176

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

02/16/2017

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns regarding Guideline C (foreign preference), but was unable to fully mitigate security concerns regarding Guideline B (foreign influence). Clearance is denied.

Statement of the Case

On August 28, 2013, Applicant submitted a Questionnaire for National Security Positions (SF-86). On December 2, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to him, alleging security concerns under Guidelines C and B. 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) promulgated by the President on December 29, 2005.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge

for a determination whether his clearance should be granted, continued, denied, or revoked.

On January 15, 2016, Applicant responded to the SOR. On March 28, 2016, Department Counsel was prepared to proceed. On April 8, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On May 26, 2016, DOHA issued a notice of the hearing, setting the hearing on June 23, 2016, but amended the notice on July 17, 2016, modifying the hearing start time. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2, which were received into evidence without objection. Applicant called two witnesses, testified, and offered Applicant Exhibits (AE) A through U, which were received without objection. On July 5, 2016, DOHA received the hearing transcript (Tr.). I held the record open until July 29, 2016, to permit Applicant to submit additional evidence. Applicant timely submitted AE V through Y, which were received without objection.

Procedural Rulings

Department Counsel requested administrative notice of facts concerning Egypt. (Exhibit (Ex) I) Department Counsel provided supporting documents to show detail and context for those facts. Without objection from Applicant, I granted Department Counsel's request and admitted Ex. I.

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 at 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). Department Counsel's summary is quoted without footnotes in the section labeled "Egypt" *infra*.

Amendment of SOR

Department Counsel moved to amend SOR ¶ 2.a to read, "Your mother, two brothers, two sisters, two sisters-in-law, and two brothers-in-law are citizens and residents of Egypt;" and to amend SOR ¶ 2.b to read, "You own real estate property and two bank accounts in Egypt" to conform to the evidence. Over Applicant's objection, I granted Department Counsel's motion. (Tr. 119-121)

Findings of Fact

Applicant's SOR response admitted all of the SOR allegations with explanations. His admissions are incorporated as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Background Information

Applicant is a 50-year-old employee of a state prison maintenance department where he has been employed since October 2015. He seeks a security clearance to work as a security officer for a defense contractor overseas. (GE 1; Tr. 52-55, 91-92)

Applicant was born in Egypt in 1966, where he was raised, and educated. He graduated from a military high school in 1985. Applicant served his mandatory military service in the Egyptian Army from 1986 to 1988. (GE 1, GE 2; Tr. 55-58, 62-63) After completing his military service, Applicant was employed as a lifeguard at a U.S. Embassy in the Mideast¹ from 1988 to 2000.² (GE 2; Tr. 59, 92)

After the first Gulf War, Applicant was the only Egyptian who remained employed at the U.S. Embassy. He acknowledged that terrorism exists in Egypt stating, “hundred and ten percent it (referring to terrorism) will make me want to be on (the) American side and try to change the things on the right side if I can....” He added that it would take someone like himself who knows the culture, “to beat those people.” Applicant stated that he understands threats and coercion because of working at the prison. He feels confident that as a result of his life experience and training, he knows how to respond to threats or coercion should they occur. (Tr. 13-14)

Applicant first traveled to the United States in 1994 on a 90-day tourist visa to receive Red Cross lifeguard certification. In successive years, he continued to travel to the United States to receive his Red Cross lifeguard certification or to visit. During a U.S. visit in 2000, he met his wife, a U.S. citizen. Applicant and his wife married in 2000 in the United States and remained married until she passed away in 2012. During their marriage, they did not have any children. Applicant has not remarried. (GE 1, GE 2; Tr. 60, 92-93, 99-100, 114-115) Since approximately April 2016, Applicant has been dating his next-door neighbor, who is employed as a state prison correction officer. (Tr. 94-96)

Since permanently entering the United States in 2000, Applicant has been employed as follows: (1) 2000 to 2003 – machine operator on work visa for a printing company. It was during his initial employment in the United States that he received his “green card” in 2002; (2) 2003 to 2004 – unemployed; and (3) 2004 to 2015 – security officer for a security services company. (GE 1; Tr. 52)

Applicant became a naturalized U.S. citizen in February 2006, and was issued a U.S. passport in March 2006. Apart from visits to Egypt and vacations outside the United States, Applicant has continuously resided in the United States since 2000. (GE 1, GE 2, Tr. 109)

¹ Hereinafter referred to as U.S. Embassy.

² Applicant worked at this U.S. Embassy from age 22 to 34, a period of 12 years.

Foreign Preference

The SOR alleges two allegations under this concern. The first allegation states that Applicant, as a U.S. citizen, possesses a valid Egyptian passport issued in July 2009 that expires in July 2016. He held his Egyptian passport for ease of travel. Post-hearing, Applicant provided documentation that he surrendered his now expired Egyptian passport in July 2016 to his prospective employer's facility security officer. (Tr. 86, 97-8, GE 2; AE V – Y) Applicant has not travelled using his Egyptian passport since he was issued his U.S. passport. (Tr. 13, 98, 109, 115) Although not alleged, Applicant holds dual citizenship with Egypt and the United States. He holds Egyptian citizenship through birth in Egypt to Egyptian parents. He is willing to renounce his Egyptian citizenship. (GE 2)

The second allegation states that Applicant voted in an Egyptian election in 2012. He was on a family visit when he voted in this presidential election. As an Egyptian, he was concerned when he exited the country he would be subject to a delay or fine by Egyptian security personnel for failing to vote. He added that he voted against the Muslim Brotherhood party, a party he did not want to see gain power. It is worth noting when Applicant voted in this election, he did not hold a security clearance nor did he anticipate applying for one. This is the only time Applicant ever voted in an Egyptian election and now that he is aware of the implications of voting in a foreign election, he does not intend to vote in future Egyptian elections. (Tr. 13, 85-86, 101-103, 109-111)

Foreign Influence

The SOR alleges two allegations under this concern. The first allegation states that Applicant has a mother, two brothers, and two sisters who are resident citizens of Egypt. Applicant described his family as apolitical and family centric. He also has numerous extended family members in Egypt. (Tr. 88, 100-101, 104-105, 107)

Applicant's mother is a 75-year-old career homemaker in poor health. His late father was employed as the personal driver for a company engineer. (GE 1; Tr. 61-63, 79-80) His 46-year-old brother (B-1) is a technician for a radio station. B-1 is married to a career homemaker and has three young children. His 37-year-old brother (B-2) is a driver like his late father. B-2 is married to a career homemaker and has two young children. (GE 1; Tr. 63-66, 96-97, 105)

Applicant's 48-year-old sister (S-1) is a career homemaker. She is married to a construction worker and has three children. Applicant's 42-year-old sister (S-2) is a career homemaker. S-2 is married to a hardware store owner and has three children. (GE 1; Tr. 66-68, 96)

Applicant sends his mother approximately \$200 a month, sometimes more for holidays such as Ramadan. His mother occasionally provides money to Applicant's siblings on an as needed basis. Applicant maintains two modest bank accounts in Egypt, one in Egyptian currency with an approximate balance of \$30, and the other in U.S. dollars with an approximate balance of \$100. (Tr. 13, 68-70, 112)

Applicant talks to his mother just about every day to check on her wellbeing using the Tango App stating, “go to Tango, push the number, and here they are.” He talks to his sisters about once a week also using the Tango App and his brothers infrequently on an as-needed basis. (Tr. 70-73)

The second allegation states Applicant owns real estate property in Egypt. When Applicant’s wife passed away in 2012, she had a \$50,000 life insurance policy with Applicant as the beneficiary. It was her wish that Applicant use this money to purchase a home for his immediate family in Egypt. Applicant fulfilled his late wife’s wish and acquired a three-story home for his family to live in. His mother and two brothers along with their families live in the home. His two sisters and their families live nearby. B-1 oversaw the purchase of the home. Initially, the home was in B-1’s name; however, B-1 transferred title to Applicant to avoid family conflicts in the event B-1 passed away. If that had occurred, the home would pass to B-1’s wife excluding Applicant’s other siblings. Apparently, placing the home in Applicant’s mother’s name was not a viable option given her age and physical condition. Applicant estimates the value of the home in Egypt to be approximately \$56,000. He also has a car that belonged to his late wife that he shipped to Egypt to use during his visits there. Applicant estimates the value of his Egyptian assets to be “\$55,000 to \$60,000.” (GE 2; Tr. 73-81, 83, 108, 112-114)

In contrast to Applicant’s assets in Egypt, Applicant owns a home in the United States with an estimated value of \$55,000. He has a checking account, a 401(k) retirement account, a car, and miscellaneous personal property. Applicant estimates the value of his U.S. assets to be “about \$90,000.” Applicant is registered to vote in the United States and regularly exercises his right to vote. (Tr. 82-84) He enjoys fishing and hunting in his free time. (Tr. 84-85)

Character Evidence

Two witnesses testified on Applicant’s behalf – a manager (M) at the security company where Applicant was employed for 12 years and a coworker (CW) at the state prison where he is currently employed.

M was Applicant’s former supervisor at the security company where he was employed from 2004 to 2015. Applicant was a roving bank security officer. M had the occasion to observe Applicant on a daily basis and found him to be a very trustworthy and dependable employee. M is familiar with Applicant’s family’s situation and knew his late wife. When Applicant was sworn in as a U.S. citizen, Applicant volunteered to lead the Pledge of Allegiance. M stated that Applicant is “as American as I am” and that Applicant’s loyalties lie with the United States. Before working for the security company, M retired from the county sheriff’s department as a supervisor after serving 26 years. M continues to maintain contact with Applicant since he left the security company in 2015. (Tr. 26-43)

CW has been employed at a state prison for 17 years and for the past seven years has been a boiler operator. CW met Applicant in February 2015 when he began working in the maintenance department. CW sees Applicant on a daily basis. CW stated

that Applicant is a “man of his word.” CW is also familiar with Applicant’s family situation and knows his girlfriend. CW provided favorable testimony in support of Applicant. (Tr. 44-51)

Applicant submitted 14 reference letters from his current supervisors, former U.S. Embassy personnel, and parents during the time Applicant was employed as a lifeguard at the U.S. Embassy. Of note, is a letter from the former U.S. Embassy diplomatic security officer, who strongly vouched for Applicant. This former diplomatic security officer welcomed Applicant in his home in the United States after he returned to the United States. The collective sense of these letters demonstrates that Applicant is responsible, honest, hardworking, and trustworthy. (AE A – G, I, J, M – P, S) Additionally, Applicant submitted seven certificates of appreciation primarily for his work at the U.S. Embassy. One of those certificates was state-issued indicating that Applicant had met all the requirements to be an armed security guard. (Tr. 88-90, AE H, K, L, Q, R, T, U)

Egypt

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.

In 2015, the Egyptian government continued to confront active terrorist groups, which conducted deadly attacks on government, military, and civilian targets throughout the country. Terrorist groups have succeeded in launching several large-scale attacks in Cairo and other urban areas.

Terrorist groups are increasingly seeking to expand the geographic scope of attacks outside the restive areas of northeast Sinai. The Islamic State and the Levant (ISIL)-Sinai Province (ISIL-SP) remained a significant threat; however, a new group calling itself “Islamic State Egypt,” distinct from ISIL-SP, has begun to claim responsibility for terrorist attacks outside of Sinai. While these organizations receive some external financial and logistical support because of their affiliation with ISIL, there is no evidence of a significant presence of non-Egyptian “foreign terrorist fighters” in Egypt.

In June 2015, terrorists attempted to attack the Karnak temple in Luxor. Also in June, Egypt’s Prosecutor General was killed in Cairo when a bomb placed by the side of a road exploded as his motorcade was passing. In July 2015, a car bomb severely damaged the Italian consulate in Cairo. In August 2015, an expatriate oil worker was murdered by jihadist elements in the western desert, just outside metropolitan Cairo.

Political protests occur without warning throughout Egypt. Demonstrations have led to frequent violent clashes between police and protestors, resulting in deaths, injuries and property damage.

The most significant human rights problems in Egypt involved excessive use of force by security forces, including unlawful killings and torture, deficiencies in due process, including the excessive use of preventative custody and pretrial detention, the use of military courts to try civilians, and trials involving hundreds of defendants in which authorities did not present evidence on an individual basis; and the suppression of civil liberties, including societal and government restrictions on freedoms of expression and the press and the freedoms of peaceful assembly and association; and limitations on due process in trials.

Egypt considers all children born to Egyptian mothers 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.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 “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.

See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three 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; 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), 7(b), and 7e) apply. Applicant was born, raised, and educated in Egypt. His mother, siblings and in-laws are resident citizens of Egypt. Applicant's mother is in large part dependent on him to provide her support. Applicant has frequent contact with his mother and sisters and to a lesser extent with his brothers. Applicant visits his family on an annual basis and cares about the welfare of his family living in Egypt. There are safety issues for people living in Egypt because of the prevalence of terrorists and other lawless elements. Applicant's family in Egypt is not receiving any special protection from the Egyptian government. Additionally, Applicant has significant assets in Egypt to include real property, a car, and two bank accounts.

The mere possession of close family ties with a family member living in a dangerous country, such as 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 potentially 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).

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 or inducement. 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 collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship of Egypt with the United States, places a significant, but not insurmountable 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 into a position where he might be forced to choose between loyalty to the United States and a desire to assist family members living in a foreign country.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Egypt seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Egypt has a significant problem with terrorism. Applicant’s relationship with family members living in Egypt creates a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist family members in Egypt by providing sensitive or classified information.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with his mother and sisters and with his brothers to a lesser extent, who are living in Egypt. Applicant's loyalty and connections to his family living in Egypt are positive character traits. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Egypt citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. Applicant has no immediate family members residing in the United States and all of his immediate family members reside in Egypt. From 1988 to 2000, Applicant worked as a lifeguard at a U.S. Embassy. During that time, he went to the United States on annual trips either to receive his Red Cross lifeguard certification or to visit. His reference letters covering this time period are exemplary. Applicant has resided in the United States since 2000 when he met and married his late wife.

Applicant became a U.S. citizen in 2006 and received his U.S. passport that same year. When he took an oath and swore allegiance to the United States as part of his naturalization as a U.S. citizen, he manifested his patriotism, loyalty, and fidelity to the United States over all other countries. He even led the Pledge of Allegiance at his swearing in ceremony. Applicant owns a home in the United States and has total assets in the United States valued at approximately \$90,000.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family living in Egypt. He frequently communicates with his family living in Egypt. There is no evidence, however, that terrorists, criminals, the Egyptian government, or those conducting espionage have approached or threatened Applicant or his family to coerce Applicant for classified or sensitive information.³ As such, there is a reduced possibility that Applicant or his family living in Egypt would be specifically selected as targets for improper coercion or exploitation. Of course, the primary risk to his family living in Egypt is from terrorists and other lawless elements. There is some risk from the Egyptian government because of the ongoing turmoil after the forcible overthrow of the Morsi regime. The post-Morsi political and law enforcement situation is unclear.

While the U.S. Government does not have any burden to prove the presence of evidence of threats or attempted coercion of Applicant or his family, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States'

³There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

sizable financial and diplomatic investment in Egypt. Applicant and his family in Egypt could become potential targets of terrorists because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant, if he visits Egypt in the future.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Egypt. Applicant is not required to report his contacts with family members living in Egypt.

Application of AG ¶ 8(f) is problematic for Applicant. Applicant's assets in Egypt approach an estimated value of \$60,000. His largest Egyptian asset being a \$55,000 home in which is mother and two brothers and their families live. His explanation for doing so to avoid potential family conflicts is reasonable, but nonetheless does not adequately alleviate the concern. This concern is exacerbated when one contrasts the value of his U.S. assets with his Egyptian assets. In short, his assets in Egypt are not minimal when contrasted with his assets in the United States. Were Applicant's assets in Egypt limited to his car and modest bank accounts, he would in all likelihood have been able to receive full application of this mitigating condition. Unfortunately, owning a home in Egypt comparable in value to the home he owns in the United States cannot be mitigated.

In sum, Applicant's connections to family living in Egypt are significant. He is close to his mother, siblings, and in-laws, who are resident citizens Egypt. These connections raise foreign influence security concerns under Guideline B and these concerns are partially mitigated because of his strong connections to the United States. However, having a significant real estate asset in Egypt of about the same magnitude of his assets in the United States precludes application of AG ¶ 8(e).

Foreign Preference

AG ¶ 9 explains the Government's concern:

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 sets out one condition with two subsections that could raise a security concern and may be disqualifying in this case:

(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; and

(7) voting in a foreign election.

At the time the SOR was issued, Applicant held a valid Egyptian passport that was due to expire in July 2016 for ease of travel. AG ¶ 10(a)(1) has been raised by the evidence. He also voted in an election in Egypt in 2012 that raises concerns under AG ¶ 10(a)(7).

Four foreign preference mitigating conditions under AG ¶ 11 are potentially mitigating to this disqualifying condition:

(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;

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

(f) the vote in a foreign election was encouraged by the United States Government.

As noted, Applicant's dual citizenship with Egypt was not alleged and had it been, full application of AG ¶¶ 11(a) and 11(b) to that circumstance would be warranted. However, of concern and what was alleged is the fact that Applicant had a valid Egyptian passport at the time the SOR was alleged. Time and subsequent steps taken by Applicant fully mitigate this concern. His Egyptian passport expired in July 2016, one month after his hearing. In an abundance of caution, Applicant surrendered his Egyptian passport to his prospective employer's facility security officer warranting fully application of AG ¶ 11(e).

An additional concern is Applicant voted in a 2012 Egyptian election as a naturalized U.S. citizen. Applicant's explanation for voting at the time while visiting his family is reasonable. When he voted, he did not have a security clearance nor is there any record evidence that he contemplated applying for a security clearance. He also did not want to risk incurring a delay or fine when leaving the country as well as being collaterally motivated to vote against the Muslim Brotherhood. Although there is no applicable mitigating condition for Applicant having voted in Egypt, mitigation is available under the whole-person concept.

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 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 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 this guideline, but some warrant additional comment.

There are foreign influence security concerns arising from Applicant's family living in Egypt. Applicant's mother, siblings, and in-laws are resident citizens of Egypt. He visits his family in Egypt annually and has significant assets in Egypt. His close connections to his family in Egypt make him more vulnerable as a target of coercion by lawless elements in Egypt. His family in Egypt may be at a greater risk if his clearance is granted.

A Guideline B decision concerning Egypt must take into consideration the geopolitical situation and dangers there. Egypt is a dangerous place because of violence from terrorists, and other lawless elements. Terrorists continue to threaten the Egyptian government, the interests of the United States, and those who cooperate and assist the United States. The Egyptian government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Egypt are allies in the war on terrorism. Egypt and the United States have close relationships in diplomacy, counter terrorism, and trade.

Significant factors weigh in Applicant's favor. He has been closely aligned with the United States beginning at age 22 when he was employed as a U.S. Embassy lifeguard for 12 years. His numerous reference letters, particularly from a former diplomatic security officer, document his diligence, honesty, professionalism, and loyalty to the United States. In 2000, Applicant came to the United States where he has remained to this day. He has established an impressive work record since arriving in the United States. His witnesses and reference letters corroborate his testimony regarding his allegiance to the United States. These factors in addition to those discussed above mitigate foreign influence concerns as it pertains to his family and foreign preference concerns related to his having voted in an Egyptian election. Regrettably for the reasons discussed above, Applicant is unable to overcome the concerns raised from his owning a significant real estate asset in Egypt.

One additional comment is worthy of note. Applicant's patriotism and loyalty are not at issue in these proceedings. Section 7 of the Executive Order specifically provides that industrial security clearance decisions shall be "in terms of the national interest and

that in no sense be a determination as to the loyalty of the applicant concerned.” Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to an applicant’s loyalty or patriotism.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole-person. I conclude Applicant has carried his burden in part; however, he was unable to overcome concerns raised by his real estate assets in Egypt. Eligibility for access to classified information is denied.

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:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

Robert J. Tuidor
Administrative Judge