



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06164

Appearances

For Government: Alison O'Connell, Esq.

For Applicant: Jacob Ranish, Esq.

02/01/2017

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 October 29, 2014. On December 29, 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 (EO) 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 11, 2016. A notice of hearing was

issued on October 19, 2016, scheduling the hearing for January 6, 2017.¹ Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I received the transcript (Tr.) on January 10, 2017.

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 offered documents for administrative notice as well, which were entered into the record as HE II.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). 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 January 1965. She was born to a Christian family. (Tr. 14) She was educated in Egypt, receiving her undergraduate degree in 1986. (GX 1) Applicant pursued a successful career in Egypt with the U.S. Embassy in Cairo. She worked in the consular officer for about 20 years. She was entrusted with sensitive information. (AX H) She retired as a senior visa assistant in 2005. Applicant obtained employment with an international organization with ties to the United States, and worked in Egypt and the United States from 2005 until 2011. She decided in 2011 to leave Egypt permanently to pursue a career as a contractor in the United States. She has not held a security clearance. She is currently a contractor for a defense company and has been with this company since 2014. (GX 1)

Applicant's mission in life in the United States has been serving an organization that receives contracts from USAID for international development through a competitive process. The firm operates in about 18 countries around the world. The company implements technical assistance and works with entrepreneurs in Africa and other designated countries. The goal is to improve their abilities to grow, develop, and create jobs. (Tr. 30)

Applicant married her husband in 1987. Her husband is an international businessman. He won the diversity lottery in 1996, enabling him and his family to come to the United States on a visa and become U.S. citizens. They have one adult son who is a U.S. citizen. They possess U.S. passports. (Tr. 39) Applicant received a certificate of naturalization in 2002. (GX 1)

¹ Due to counsel schedules and caseload, the case was scheduled in January 2017. All parties agreed to the date.

Applicant's father was a citizen and resident of Egypt, and a retired physician. However, he died in April 2016. (AX C) Applicant's mother is 78 years old and a retired pharmacist. She was the full time caregiver for her husband before his death. Her mother has never had any affiliation with the Egyptian government. Applicant does not discuss the nature of her work with her mother. (Tr. 22) After Applicant's father died, her mother, who has held a U.S. Visa since 2013, spent six or nine months living in the United States. (AX D) She returned to Egypt recently to finalize immigration papers. When she returns to the United States, she will live with Applicant. Applicant expects her mother to return in the summer of 2017. She will apply for permanent residency in the United States. (Tr.23) Applicant's mother supports herself with a family inheritance and a pension. Applicant's mother has no intention of returning to Egypt.(SOR 2.a-2.b)

Applicant's husband maintains money in an Egyptian bank (SOR 2.c) At one time there may have been one million dollars in the account but due to the exchange rate and the fact that Applicant's husband has used approved wire exchanges to bring money to the United States, the amount is about 50% lower. Each time that Applicant's husband goes to Egypt, he brings the allowed amount of \$10,000. The allowed amount for a wire transfer is \$100,000 per year. Applicant submitted documentation to show the current status of the Egyptian bank account. She explained that her husband inherited money and he considers this money his own. There are restrictions on taking money out of Egypt and so he has not been able to liquidate all the funds. Applicant's husband has a business in the United States and his nephew runs the business office in Egypt.

Applicant elaborated on the fact that they are not dependent on the money in the Egyptian bank. They gave their son about \$50,000 as a down payment on a home. They are not relying on the money for retirement. (Tr. 27)

Applicant's assets in the United States are quite substantial. She and her husband own a home in the United States, which does not carry a mortgage loan. The estimated value of the home is about \$700,000. Applicant has about \$900,000 in savings. (Tr. 40) She submitted a detailed balance sheet of all assets in the United States. After accounting for liabilities, she is worth approximately \$1,800,000. (AX A, B)

Applicant submitted ten letters of reference, which detail no reservations about Applicant having a security clearance. She is active in the community, and volunteers for the local government when she is not working. She is active in the local church and she assists new immigrant families with their integration into the United States. A colleague who has known her for 20 years attests to her energetic, conscientious work habits. She is patient and thoughtful with clients. She is described as a person who is always willing to go above and beyond for the mission. Each letter of recommendation attests to Applicant's dignity and unquestionable honesty and reliability. Applicant has spent her adult life supporting the U.S. Government's interests in one form or another. (AX H, with attachments)

Foreign Preference

Applicant does not have a valid Egyptian Identity card. (SOR 1.a) The mandatory card was issued to her at the age of 16. She has no need or desire to keep the identity card as she is a permanent resident of the United States. She was not aware that the card would be an issue. She surrendered the identity card to her FSO, and attached a sworn statement confirming her statement.

Applicant voted in the 2014 Egyptian election. (SOR 1.b) She has never voted in any other Egyptian election. Applicant was in Egypt at the time visiting her ailing father. Applicant understood that this was an historic moment for Egypt. She believed that this election was a milestone and a clear direction for the country. She also believed that it was mandatory for her to vote. Applicant voted not for Egypt but for the significance of the democratic process. She stated that she also voted out of fear. (Tr.22) She has no intention of voting in an Egyptian election again. (Tr. 60) 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 2014 Egyptian election, the U.S. Government was certainly enthusiastic about the 2012 election and many government entities lauded the election.

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. 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 mother who is not yet a U.S. citizen and is now in Egypt; as well as by her husband’s money in 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 her relationship with her mother 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 her mother living 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 mother in Egypt creates a concern about Applicant's "obligation to protect sensitive information or technology" and her desire to help her when she is in Egypt.

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 mother, it is not possible to rule out such a possibility in the future. Applicant's husband has an international shipping business with money 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."

AG ¶¶ 8(a), 8(b), and 8(f) are applicable. Applicant's mother has a U.S. visa and lived in the United States after her husband died. She returned recently to Egypt to settle some things and will return to the United States. Applicant, her daughter, lives in the United States. Applicant has no other family in Egypt. The amount and nature 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. It is unlikely under the circumstances that Applicant will be placed in a position of having to choose between her loyalty to her mother and United States interests.

AG ¶ 8(b) is applicable. Applicant expressed her loyalty to the United States. She is a naturalized citizen who has lived and worked for the United States government in Egypt and the United States since 1985. 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 worked for the United States Government in Egypt and the United States since 2005. She has lived permanently in the United States since 2011. She worked for the Embassy in Egypt in the consular section and received promotions and certificates of appreciation. She also worked for an international agency that promotes U.S. interests in the world. She is a naturalized citizen who has spent more than 20 years working to support the United States. Her husband won the lottery in 1996 and brought his family to the United States. He has an international business and is in the process of transferring his money in Egypt to the United States. Applicant and her husband have substantial wealth in 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 mother, who has a U.S. visa and is returning soon to the United States does not cause a security concern.

AG ¶ 8(f) is also applicable. Applicant has substantial wealth in the United States. Her portfolio reveals about \$1,800,000. Her husband owns the business and the money in Egypt, which amounts to about \$225,000 at the current exchange rate. Applicant was adamant that she does not rely on that money and the loss of the assets would not influence her to betray the United States. Her husband is transferring the money to the United States in the legal manner and under the stringent requirement of the Egyptian government.

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 2014, Applicant voted in the Egyptian presidential election. She testified that she was in Egypt at the time visiting her ailing father who is now deceased. 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 was in fear that if she did not vote, there might have been dire consequences. 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 many years in the United States supporting the United States. Applicant's voting did not express a preference for Egypt, but showed her opposition to the current regime.

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 worked for the United States in Egypt since 1985. She worked for an international agency with ties to the United States beginning in 2005 and commuted between the United States and Egypt. Her husband won the lottery in 1996 and the Applicant and her son came to the United States. She and her husband are naturalized U.S. citizens. Her son is a U.S. citizen. She has been quite successful in her work. She and her husband share a life in the United States. She has received many letters of recommendation stating that she would resolve any issues in favor of the United States.

Applicant's father died in 2014 and her mother has been living in the United States on a U.S. visa. She will return to the United States this summer and expects to get her U.S. citizenship and live in the United States. Applicant has no other family in Egypt.

Applicant's husband has an international shipping business. He has money in an Egyptian bank worth about \$225,000 at the current time. He is in the process of transferring the money to the United States in a legal fashion. Applicant and her husband have substantial wealth in the United States. They do not rely on the money in Egypt.

Applicant voted in an Egyptian election in 2014 because she was in Egypt at the time and believed it was mandatory. The United States did not condone such a vote, but was enthusiastic about the 2012 election. She does not plan to vote in any other Egyptian elections. Applicant votes in U.S. elections. She no longer has an Egyptian identity card.

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 her 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

Subparagraphs 1.a-1.b: For Applicant

Paragraph 2, Guideline B, FOR APPLICANT

Subparagraph 2.a-2.c: 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