



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



In the matter of:)
)
) ISCR Case No. 15-05175
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq., Applicant's Counsel

February 22, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On July 27, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on September 21, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 25, 2017, scheduling the hearing for March 8, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf. Applicant presented 18 documents, eleven of which are attached to his Answer, and the remaining five of which were offered at his hearing. I marked Applicant's prehearing and hearing Exhibits (AppXs) as A through R, all of which were admitted without objection. DOHA received the transcript of the hearing (TR) on March 21, 2017.

Procedural Rulings

At the hearing, the Government Counsel and Applicant's Counsel, both requested I take administrative notice of certain facts relating to the Arab Republic of Egypt (Egypt). Department Counsel provided a five-page summary of the facts, and Applicant's Counsel a seven-page summary, both supported by three Government documents and ten Applicant documents pertaining to Egypt, identified as HE I and AppX R, respectively. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports provided by both the Government and Applicant. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.b., and 2.c. He denied SOR allegations ¶¶ 1.a., 2.a. and 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 59-year-old employee of a defense contractor. (TR at page 15 line 23 to page 18 line 16, and GX 1 at page 5.) He has been employed with the defense contractor since 2009. (TR at page 15 line 23 to page 18 line 16, and GX 1 at pages 12~13.) He has held a security clearance since 2009. (*Id.*) He is married to a U.S. citizen, and has two adult children, one of whom served in the U.S. Army for five years. (TR at page 15 line 23 to page 18 line 16.)

Guideline C – Foreign Preference

1.a. Applicant, who came to the United States in about 1987~1988, admits that after becoming a U.S. citizen in 1992, he obtained an Egyptian National Identity Card (ID). Applicant received a Bachelor's Degree in Egypt, but "he had to get an ID in order to obtain . . . [a copy of his] Degree." (TR at page 18 line 24 to page 21 line 7, at page 34 line 7 to page 35 line 7, and GX 1 at pages 2~3.) However, he denies that he still possesses this ID. (Answer at page 1.) In September of 2014, Applicant surrendered his National Identity Card to his Assistant Facility Security Officer (AFSO); who "destroyed" said ID, as certified by his AFSO. (*Id.*, Answer at page 1, and AppX N.)

1.b. Applicant admits that he voted in an Egyptian National Election in May of 2014. His cousin picked up Applicant and drove him to the Egyptian Embassy. (TR at page 21 line 10 to page 24 line 14, and at page 35 line 8 to page 36 line 13.) He had no intention of voting; but got caught up in the celebratory atmosphere. Applicant

discovered that he could vote by using his ID, and did so. This is the only time Applicant ever voted in a non-U.S. election, and has no intention of so voting in the future. (*Id.*) As stated above, in September of 2014, Applicant surrendered the ID to his AFSSO; who “destroyed” said ID, as certified by his AFSSO. (*Id.*, Answer at page 1, and AppX N.)

Guideline B - Foreign Influence

2.a. Applicant denies that his spouse is a dual national with Iraq. Although born in Iraq, she has been a U.S. citizen since 1988, for about thirty years, and resides with Applicant in the United States. (TR at page 25 line 5 to page 27 line 14, and AppX M.) “All her family” reside in the United States. (*Id.*)

2.b. Applicant’s mother died in January of 2015; and as such, is no longer a citizen and resident of Egypt. (TR at page 27 line 15 to page 29 line 2.)

2.c. Applicant’s two elderly sisters are citizens and residents of Egypt. (TR at page 29 line 6 to page 32 line 6, and at page 36 lines 14~18.) They are both widowed, in their 70s, live together, and have no connection with the Egyptian government. (*Id.*) They know nothing about Applicant’s employment, but he does contact them about twice a month for casual conversation. (TR at page 29 line 6 to page 32 line 6, and at page 36 lines 14~18.)

Notice

I take administrative notice of the following facts regarding Egypt. Since 2015 and continuing, the Egyptian government continues to confront active terrorist groups. 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 involve excessive use of force by security forces.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C - Foreign Preference

The security concern relating to the guideline for Foreign Preference 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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

Applicant obtained an Egyptian ID, and used it to vote in an Egyptian election in 2014. Arguably, the evidence is sufficient to raise the above disqualifying conditions of AG ¶¶ 10(b) and 10(d).

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. One is potentially applicable:

- (e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern;

Applicant has surrendered his ID to his AFSO, who destroyed it. He has absolutely no intention of obtaining another Egyptian ID or of voting in any future Egyptian election. His veracity in this regard is evidence by the plethora of letters of support and his achievements as an interpreter for the United States. (AppXs B`K and Q.) AG ¶ 11(e) provides mitigation with respect to this guideline.

Guideline B - Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. One is potentially applicable in this case:

(a) contact, regardless of method, 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.

Applicant has two elderly sisters who are citizens and residents of Egypt. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States; and

(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.

Applicant's contact with his retired, widowed, elderly sisters is casual, at best. They know nothing of his continuing service to his adopted country, the United States.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Applicant has the unqualified support of those who know him in his service to the United States. (AppXs E~K and Q.) Furthermore, he can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence and Foreign Preference security concerns.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Subparagraph 2.c:

For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge