



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



In the matter of: )  
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 REDACTED ) ISCR Case No. 15-04903  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.  
Ryan C. Nerney, Esq.

12/20/2017

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant made donations to an IRS-recognized charity that was established by the Muslim Brotherhood, an entity which the U.S. Congress in 2017 considered for designation as a foreign terrorist group. Applicant stopped his contributions in 2013 when the organization was no longer involved in supporting a local youth program. He intends to never again make a charitable contribution to any U.S.-based nonprofit with ties to any foreign group. Clearance is granted.

**Statement of the Case**

On February 17, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guideline B, foreign influence, and explaining why it was unable to grant or continue security clearance eligibility to him. The DOD CAF acted under Executive Order 10865 (EO), *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines for Determining Eligibility for access to Classified Information (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on March 20, 2017, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 1, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 28, 2017, I scheduled a hearing for August 2, 2017. At the request of Applicant's counsel and with no objection from the Government, on June 30, 2017, I rescheduled Applicant's hearing for August 1, 2017.

While this case was pending a hearing, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4 establishing new National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require national security eligibility or eligibility to hold a sensitive position. With the original notice of hearing, I provided Applicant's counsel with prehearing guidance as well as an amendment to that guidance notifying him that Applicant's security clearance eligibility would be adjudicated under the new AG.<sup>1</sup>

I convened the hearing on August 1, 2017, as rescheduled. Six Government exhibits (GEs 1-6) and 14 Applicant exhibits (AEs A-N) were admitted into evidence without objection. Applicant testified, as reflected in a hearing transcript (Tr.) received on August 8, 2017.

On August 2, 2017, Applicant's counsel moved to reopen the record to submit an additional letter of recommendation. The document was admitted as AE O without any objection from the Government.

### **Findings of Fact**

The SOR alleges under Guideline B that, from approximately 2010 through 2013, Applicant made charitable donations to a U.S.-based organization (organization X) that has ties to the Muslim Brotherhood (SOR ¶ 1.a). When he answered the SOR allegation, Applicant admitted making the contributions but indicated that he had disclosed the contributions during his interview for his background investigation; that he stopped his contributions in 2013 when he decided that the organization was not serving the inner-city youth; that he has no financial interest in the organization; and that the organization had a U.S. tax-exempt identification, which meant to him that the group had been vetted by the U.S. government. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 55-year-old native of Egypt, who acquired his U.S. citizenship by naturalization in April 1987. Applicant has worked as a senior systems engineer for his defense-contractor employer most recently since September 2016. He was initially granted a DOD secret clearance in 1987 during his previous tenure with the company from June 1987 to January 1992. His clearance was renewed most recently in 2009, when

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

he was working for a different defense contractor. (GE 1; AE C; Tr. 19.) He needs to retain security clearance eligibility for his current employment. (AE O; Tr. 21.)

Applicant came to the United States at age 14 in 1976. He attended high school and college in the United States. He earned a bachelor's degree in May 1987 and a master's degree in January 1992, both in electrical engineering. (GE 1; AEs D-E.) He was married to a U.S. native citizen from May 1989 to October 2002, and they had four children now ages 20, 22, 26, and 27. Applicant married an Egyptian citizen in Egypt in August 2004. She came to the United States legally, but returned to Egypt after she and Applicant divorced in October 2005. (GEs 1-2; AEs B-C; Tr. 20.) Applicant obtained an Egyptian passport in February 2004 for ease of travel to Egypt to marry his second wife and because it was needed to officially register their marriage in Egypt. Applicant retained that passport until August 18, 2009, when he surrendered custody of the passport to his then employer's facility security officer for destruction. (GEs 1-2.)

Applicant worked as a senior member of the technical staff for his current employer from June 1987 to January 1992, and he held a DOD secret clearance throughout that employment. His clearance was transferred to him for his work with another defense contractor from January 1992 to January 1995. For the next 14 years, he was employed in the commercial sector in the field of cellular communications. Applicant returned to the defense industry in August 2009, and his secret clearance was renewed. (GE 1.)

While working for a previous employer as a senior principal systems engineer, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on October 13, 2011, for a top secret clearance. Applicant indicated that he had contact with two maternal uncles in Egypt about twice a year to exchange greetings. He also disclosed contact with a maternal aunt in Egypt once every two months. Applicant last visited these relatives in Egypt in July 2004. Applicant denied any foreign financial interests and any foreign travel within the last seven years. (GE 1.)

On November 21, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that he held dual citizenship with Egypt and the United States until August 2009, when he surrendered his Egyptian passport for destruction to his then employer's facility security officer. He denied any connection to Egypt apart from his three elderly relatives. Applicant explained that he married his first cousin in an arranged marriage in August 2004, and his second wife came to the United States under his sponsorship. Their marriage did not last due to cultural differences, and she returned to Egypt in October 2005. He denied any contact with his ex-wife since then. (GE 2.)

Applicant had a second interview with an OPM investigator on May 21, 2013. When queried about his finances, Applicant disclosed that he has occasionally given about \$100 to \$200 to a religiously-affiliated relief fund to support orphans in response to disasters. Additionally, he volunteered that he supports his local religious/cultural center at \$150 a month, and that he has donated \$100 to \$150 per month to organization X since about 2010. He expressed his belief that it is appropriate to aid the less fortunate and to

contribute to the maintenance costs of the religious/cultural center he attends. (GE 2; AE A.)

On November 21, 2016, DOHA inquired of Applicant whether he was ever aware that organization X had ties to the Muslim Brotherhood and whether he or a relative or associate had ever made any charitable donations to several named organizations or groups linked to terrorism. On December 21, 2016, Applicant responded that he renewed his U.S. passport in August 2015, his maternal aunt in Egypt had died, and he had contact with his two uncles in Egypt about once a year. He indicated that he was not aware that organization X had ties to the Muslim Brotherhood and explained:

I was not aware of any ties between [organization X] and Muslim Brotherhood. I am aware there are some claims about such ties in certain publications from islamophobic groups. But I know they are not true. I used to make donations to [organization X] because I was interested in the work they championed with inner city youth . . . . The focus of these activities is to engage the young kids and mentor them with positive role models as a way to fight back against radicalization. I stopped making donations to [organization X] about 3 years ago when the youth work became less of a focal point.

Applicant responded negatively concerning whether he provided any charitable organizations to the terrorist groups listed, including the Muslim Brotherhood. He added:

As a basic principle, I only make donations to organizations that are based in the US AND have a valid US Tax ID. That tells me that the organization has been vetted by the government and that donations to it can be claimed it as a tax deduction. Neither myself, nor my family members were ever a member, supporter, or representative of the listed groups. No one I associated with is a member, supporter, or representative of the listed groups as far as I know. (GE 2.)

The Government's evidence indicates that the Muslim Brotherhood is a fundamentalist Sunni Islamic organization based in Egypt that has sought to influence the internal politics in various Arab states for over 50 years. Its overall objective is the creation of a modern political community based on Islamic precepts. Historically, the Muslim Brotherhood was willing to influence the policy of secular regimes in the Arab world by non-violent means. (GE 5.) The Muslim Brotherhood has operated largely in secret in the United States since the 1960s. Its activities are unknown to many Muslims in the United States. In 1993, it established a nonprofit 501(c)(3) operating under the name of organization X. Because of its increasingly conservative and extremist stance, the Muslim Brotherhood had alienated many moderate Muslims in the United States. By 2004, the leadership of organization X was denying any connection to the Brotherhood, but some 45 percent of its 1,500 "active members" (those in its highest membership class) reportedly belonged to the Brotherhood. Through charitable contributions, organization X has had a significant and ongoing impact on Islam in the United States, helping to

establish mosques, Islamic schools, summer youth camps, and prominent Muslim organizations. (GE 6.) The current U.S. Administration considers the Muslim Brotherhood to be an agent of radical Islam. (GE 4.) On January 9, 2017, both the U.S. Senate and U.S. House of Representatives introduced bills to require the U.S. Secretary of State to submit a report to Congress within 60 days on whether the Muslim Brotherhood meets the criteria for designation as a foreign terrorist organization. (GE 3.) The evidence does not show that the Muslim Brotherhood has been designated as a foreign terrorist organization.

Organization X describes itself as “a dynamic charitable, religious, social, cultural, and educational organization,” with more than 50 chapters in the United States. Its stated focus is on “the personal development of individuals through a comprehensive Islamic educational curriculum,” by providing opportunities for “community service, interfaith initiatives, youth programs, and civic engagement.” (AE N.)

On July 19, 2017, Applicant executed a statement of intent to never again make a charitable donation to a U.S.-based nonprofit that has ties to any foreign groups and to continue to have minimal or no foreign contacts outside of any official duties and that any conversations would remain strictly casual and infrequent. Applicant consented to automatic revocation of his security clearance for any violation. (AE F; Tr. 27.)

Applicant expresses allegiance only to the United States. (GE 2; AE A.) He admitted at his hearing that, with the understanding that organization X was a 501(c)(3) charity, he made charitable contributions from approximately 2010 to 2013 because the organization was helping refugee youth in his area against threats of criminalization (drugs and gangs) and Internet radicalization. He stopped his contributions when the organization began to focus on education rather than on inner-city youth. He first learned of the activities of organization X at his religious/cultural center and was unaware at the time that it had any organizational ties to the Muslim Brotherhood, but he had been told that organization X was an approved nonprofit by the IRS. It was his understanding that organization X had received a federal grant and that its existence as a valid faith-based organization was validated for him by a political event in his area attended by his state’s previous governor, the chief justice of his state’s supreme court, and the city’s mayor. Applicant testified that he works against the beliefs of Muslim extremist groups. (Tr. 21-33.) As of August 2017, Applicant was receiving solicitations for donations from organization X, but he testified that he ignores them or indicates that he is not interested. (Tr. 36.)

## **Work Performance and References**

Applicant received a program achievement award for his work with a previous defense-contractor employer in June 1994. As a group leader for systems engineering for a commercial communications company between August 1999 and December 2005, he exhibited broad technical expertise and drive and commitment. He was recognized for exceptional performance in September 2005. Applicant displayed excellent analytical skills and good working knowledge while employed as a lead systems designer for his

next employer. He continued to show dedication and commitment while working for the defense contractor that employed him from August 2009 to September 2016. (AEs G-J.)

Applicant was rated for his performance three months into his current employment and assessed as having met his employer's expectations. (AE K.) According to Applicant's current manager, Applicant has integrated well in the department and its ongoing systems engineering work. Applicant was able to learn their advanced technology quickly. Applicant volunteered for new proposal work, which can be quite demanding, and he was "doing quite well in his job." (AEs L-M.) Applicant's hiring manager has had routine encounters with Applicant at work and indirect contact through discussions with other managers about Applicant's assignments and qualitative performance. He has found Applicant to be "highly technically competent, very professional, and strongly committed to completing his assignments in a timely manner and with high quality." This manager sees great potential for Applicant to be a significant lead technical contributor to future programs, but it is necessary that Applicant retain his current clearance. (AE O.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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 the 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 that 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. Section 7 of EO 10865 provides that 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 B: Foreign Influence**

The security concern about foreign influence is articulated 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 that is 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 undisputed evidence is that Applicant made contributions of \$100 to \$150 per month from 2010 to 2013 to organization X, which was established in 1993 by the Muslim Brotherhood, an entity that Congress has considered for designation as a foreign terrorist organization. Material support, financial or otherwise, to a U.S.-based organization with ties to a group associated with a risk of terrorism raises considerable foreign influence concerns under AG ¶ 7(b), which provides:

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

However, the evidentiary record also shows that Applicant's financial support for organization X was intended for local refugee youth to counter religious radicalism and engagement in criminal activity, and it was not knowingly for any purposes inconsistent

with U.S. interests. Applicant was unaware that the organization had any tie to the Muslim Brotherhood. It was reasonable for him to assume that his contributions were going to an approved U.S.-based charity, given that organization X was recognized by the IRS as a 501(c)(3) charity. Under those circumstances, it is understandable that he would dismiss the claims made in publications from “Islamophobic” groups of an affiliation between organization X and the Muslim Brotherhood. Had Applicant any concern that his contributions would have been viewed as supportive of a group with anti-American goals, he would not likely have self-reported his contributions when he was interviewed by an OPM investigator. He stopped donating in 2013 when the youth work became less of a focus of the organization, which was well before the SOR was issued and before Congress sought to designate the Muslim Brotherhood as a terrorist organization.

Applicant executed a statement of intention to never again make a charitable donation to any U.S.-based nonprofit with ties to any foreign groups. Since immigrating to the United States at age 14, he has established considerable ties to the United States, including a record of professional accomplishment in the defense industry, which make it likely that he will abide by that commitment. Mitigating condition AG ¶ 8(b) provides:

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has lived in the United States for 41 years and has American values and principles. He was educated through his master’s degree in the United States. He raised four children who are lifelong resident U.S. citizens. Although he renewed his Egyptian passport in February 2004 to officially marry his first cousin in Egypt in August 2004, they divorced in October 2005. He has not seen his second wife since then, and he surrendered his Egyptian passport to the custody of his then employer’s facility security officer in August 2009. He obtained his U.S. citizenship in 1987 and recently renewed his U.S. passport in 2015. His work references and evaluations attest to his contributions and dedication in the U.S. defense industry. He has no allegiances outside of the United States, and his contact with foreign citizens is limited to once yearly contact with two elderly uncles in Egypt following the death of his aunt. There is no evidence that he has, or that he has ever had, any contact with radical extremists that could influence him to act contrary to U.S. interests. The foreign influence concerns raised by his past contributions to organization X are mitigated.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶

