



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



In the matter of: )  
)  
) ISCR Case No. 16-03318  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

03/01/2018  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On February 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted under Executive Order (EO) 10865, *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 (AG).<sup>1</sup>

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<sup>1</sup> I decided this case using the AGs implemented by DOD on June 8, 2017. However, I also considered this case under the previous AGs implemented on September 1, 2006, and my conclusions are the same using either set of AGs.

Applicant answered the SOR on February 27, 2017, and requested a hearing before an administrative judge. On May 16, 2017, the case was assigned to me. On July 20, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 17, 2017. I convened the hearing as scheduled. Government exhibits (GE) 1-2 were admitted in evidence without objection.<sup>2</sup> The Government's exhibit list, discovery letter, and request for administrative notice were marked as hearing exhibits (HE) I-III. Applicant testified, called two witnesses, and offered exhibits (AE) A, B, D, F, F-R (no exhibits C or D were offered, and there were two exhibit Fs offered) which were admitted without objection. DOHA received the transcript (Tr.) on August 25, 2017.

## **Procedural Rulings**

### **Administrative Notice**

I took administrative notice of facts concerning Egypt. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.<sup>3</sup>

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>4</sup> Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S Government reports.<sup>5</sup>

## **Findings of Fact**

In Applicant's answer to the SOR, she denied SOR ¶¶ 1.a-1.c, and admitted ¶ 1.d, with explanations. Her admission is incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

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<sup>2</sup> Although I admitted GE 2 (Enhanced Subject Interview by an Office of Personnel Management (OPM) investigator), I have given it minimal weight. After reviewing the document, I found it confusing and unreliable because the investigator mixed up references to Applicant (who was referred to as "subject" in the document) with Applicant's ex-husband (who was referred to as "subject's husband") on several occasions. Applicant also pointed out additional errors in GE 2 during her testimony. Department Counsel conceded the inaccuracies in the document and offered to withdraw it. I kept the document in the record for review purposes. Tr. at 32; GE 2.

<sup>3</sup> The Government's request and the supporting background documents were marked as hearing exhibit (HE) III.

<sup>4</sup> 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).

<sup>5</sup> See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Applicant is 36 years old. She entered the United States with her family in approximately July 1987 when she was five years old. She became a naturalized U.S. citizen in April 1997. She has a master's degree. She previously held a security clearance from 2005 through 2008. The clearance became inactive in 2008 because she no longer needed it for her job. She has been employed by her current federal contractor since February 2015. She was divorced in August 2016, and has sole custody of her two minor children.<sup>6</sup>

The SOR alleged that Applicant's ex-husband (I refer to Applicant's husband as her ex-husband throughout this decision, however, at the time of his attempted espionage, Applicant was married to him) pleaded guilty to attempting to sell classified information to a foreign entity; her former in-laws (mother, father, brother, and three sisters) are citizens and residents of Egypt; and her two cousins are citizens and residents of Egypt.

Applicant was born in Egypt. Her family has remained in the United States since they emigrated from Egypt in 1987. All her family (father, mother, brother, and sister) have become U.S. citizens. Her father is a university professor. As noted above, Applicant became a U.S. citizen in 1997. She attended elementary and high school in the United States. She also received both her bachelor's and master's degrees from U.S. universities. She worked for a defense contractor as an engineer from 2003 through 2008. She held a security clearance at that time. From 2008 until 2015, she either held a job not requiring a security clearance or was unemployed.<sup>7</sup>

Applicant met her ex-husband while traveling to Egypt in approximately 2006. They married in 2007. She sponsored him for a U.S. visa and he came to this country in 2008. Although he had a bachelor's degree from an Egyptian university, he sought a degree from a U.S. school. Applicant supported him and paid for his education. He became a U.S. citizen in 2012 and graduated with his bachelor's degree in 2013. During all this time, Applicant supported their family on her salary alone. Applicant's ex-husband went to the Egyptian embassy to renounce his Egyptian citizenship so he could qualify to hold a security clearance. Applicant has never visited the Egyptian embassy.<sup>8</sup>

In December 2014, Applicant first became aware that her ex-husband was involved in attempted espionage against the United States. She came home for lunch from work and found the FBI searching her house. She was pulled aside by Agent X who told her that her ex-husband had been arrested for attempted espionage and that his first court appearance was the next day. Applicant was interviewed by Agent X concerning any knowledge she had about her ex-husband's activities. She asserted that

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<sup>6</sup> Tr. at 11-13; GE 1.

<sup>7</sup> Tr. at 20-22, 26, 31; GE 1.

<sup>8</sup> Tr. at 56-57, 60, 69-70; GE 2.

she had absolutely no knowledge of her ex-husband's illegal acts or his plans. Agent X believed Applicant and commented that she was also a victim of her ex-husband's crimes. Applicant was never charged or indicted in connection with her ex-husband's illegal activities. Her personal electronic property, which was seized during the search of her residence, was returned to her. Agent X was willing to testify for Applicant at this hearing, but his agency's counsel would not permit it. During her ex-husband's bond hearing in December 2014, evidence was presented by the U.S. Attorney's office that her ex-husband admitted that Applicant had no knowledge of his activities. He stated he did not trust her because she had become so American. He further stated that he planned to have his mother kidnap his two sons from his wife's custody and take them to Egypt.<sup>9</sup>

In October 2015, Applicant's ex-husband pleaded guilty and was sentenced to 11 years in prison for his attempted espionage against the United States. He remains incarcerated. Applicant filed for divorce in April 2016. Her ex-husband does not have visitation rights with the children. He is allowed to call the children. When first incarcerated, he called them approximately once a month, but now he does not call them at all. She has no contact with her former in-laws who still reside in Egypt. They rarely call to talk to the grandchildren. Applicant visited Egypt a month before her hearing. She was with her two children and her parents and visited her father's relatives. She made no contact with her in-laws while there. Even when she was married, she was not close with her in-laws. She never intends to return to Egypt to live. She will only visit there accompanied by her parents.<sup>10</sup>

Applicant has infrequent contact with her cousins living in Egypt. Those contacts consist mainly of telephone calls on holidays and special occasions such as birthdays. Her cousins have no affiliations with the Egyptian government. She disclosed the relationship with her cousins during the 2005 security clearance investigation process and she was granted a clearance then.<sup>11</sup>

Applicant has lived in the United States for over 30 years. She was educated here and is employed here. She owns no property or investments in Egypt. In her current U.S. job, her annual income is approximately \$105,000 and she has approximately \$100,000 in investments. Her two children are native U.S. citizens. Her parents and siblings are citizens and residents of the United States. Her parents own a home in the United States and have no property in Egypt. Her parents and siblings have no intention of returning to Egypt to live.<sup>12</sup>

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<sup>9</sup> Tr. at 34-40; AE D, F (the first exhibit F, email dated May 8, 2017), Q.

<sup>10</sup> Tr. at 36, 40, 42-43, 56, 58-59, 61, 63; AE F (the second exhibit F, Petition For Dissolution of Marriage, April 2016), G.

<sup>11</sup> Tr. at 46-47, 64.

<sup>12</sup> Tr. at 53-54, 65-67.

Applicant's program manager testified for Applicant. He has been working on the program with Applicant since 2016. He is fully aware of the SOR allegations in Applicant's case. He is a former military officer and has held a security clearance for 29 years. He explained that Applicant is trustworthy and exercises good judgment in all work-related matters. He supports Applicant retaining her security clearance. He also provided a statement in support of Applicant.<sup>13</sup>

Applicant's high school friend, who now works with Applicant also testified. He opined that Applicant is trustworthy and should be granted a security clearance.<sup>14</sup>

Applicant also offered statements from another coworker and a neighbor couple who used to live next to Applicant. All believe she would properly protect classified information. She is described as loyal, trustworthy, and reliable. Applicant also presented two years' worth of performance appraisals showing that she "meets expectations."<sup>15</sup>

The U.S. Government has issued a travel warning for citizens traveling to Egypt due to terrorist threats. There are a number of terrorist organizations, including the Islamic State of Iraq and the Levant (ISIL) operating in Egypt. Egypt experiences human rights problems in the nature of 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. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in 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 careful weighing 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

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<sup>13</sup> Tr. at 78-82; AE R.

<sup>14</sup> Tr. at 84-86.

<sup>15</sup> AE J-N.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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**

AG ¶ 6 explains the security concern about “foreign contacts and interests” as follows:

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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying 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;
- (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;
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity; and
- (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.

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 or friend is associated with or dependent upon the government, 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 between Egypt and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her relationships with her relatives living in Egypt do 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 relatives living in Egypt who might be coerced by governmental entities, or pressured to assist 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."<sup>16</sup> Furthermore, friendly nations can have profound

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<sup>16</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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.

Although Applicant's ex-husband attempted to engage in espionage (unknown to Applicant) against the United States, there is no evidence that intelligence operatives from Egypt seek or have sought classified or economic information from Applicant. It is not possible to rule out such a possibility in the future.

The record evidence unequivocally supports that Applicant had no knowledge of her ex-husband's criminal activity. Moreover, once he was convicted, she sought and received a divorce from him, which also granted her full custody of their children. Her ex-husband remains incarcerated and she has no relationship with him or his family (her former-in-laws listed in the SOR). AG ¶¶ 7(e), 7(g), and 7(h) do not apply. The blood relationship her minor children have with their father and paternal Egyptian relatives, and her relationship with her Egyptian cousins is sufficient to cause the application of AG ¶¶ 7(a) and 7(b).

AG ¶ 8 lists 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, or allegiance to the 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; 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 credibly testified that Egypt is nothing more than a birthplace to her. Her family and life are here in the United States. She has minimal contact with her ex-husband and her former in-laws. That contact is limited to facilitate telephone calls between her children and their father and grandparents. She only has contact with her cousins on holidays and special occasions, such as birthdays. She presented sufficient evidence to establish that it is unlikely that she would be placed in a position to choose



between the interest of her family living in Egypt and those of the United States. AG ¶ 8(a) applies. AG 8(c) applies to her ex-husband and her former in-laws.

Applicant has met her burden to establish her “deep and longstanding relationships and loyalties in the U.S.” She has resided in the United States for over 30 years. She became a U.S. citizen in 1997. Her two children were born here and her parents and siblings are citizens and residents here as well. Her financial means are U.S.-based and she has no financial connection to Egypt. Her supervisors and coworkers attest to her loyalty and overall trustworthiness. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

### **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(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 the facts and circumstances surrounding this case. The circumstances tending to support granting Applicant’s clearance are more significant than the factors weighing towards denying her clearance. I considered the recommendations of her coworkers who all resoundingly recommend that Applicant retain her security clearance. I considered Applicant’s complete lack of knowledge of her ex-husband’s crimes and her disassociation from him after his conviction. I also considered her strong ties to this country, thereby demonstrating her longstanding loyalty to the United States. Therefore, she provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence concerns were either not established or mitigated.

### **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 B: FOR APPLICANT

Subparagraphs 1.a: - 1.d: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge