



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No.: 16-03331
)
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Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel
For Applicant: Cathryn Young, Esquire

08/10/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by siblings who are citizens and residents of Egypt. His request for a security clearance is granted.

Statement of Case

On May 4, 2015, Applicant submitted a security clearance application (SF-86). On November 16, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. 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 December 8, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to another administrative judge on September 26, 2017. It was reassigned to me on October 2,

2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2018, scheduling the hearing for March 12, 2018. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1, which was admitted without objection, and Hearing Exhibit (HE) I for Administrative Notice. Applicant testified on his own behalf and presented Applicant Exhibits (AE) A through E, which were admitted without objection and HE II. The record was left open until March 19, 2018, but Applicant submitted nothing further.¹ DOHA received the transcript of the hearing (Tr.) on March 20, 2018.

The SOR was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous AG, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Procedural Rulings

The Government and Applicant both requested I take administrative notice of certain facts relating to Egypt. Department Counsel provided a five-page summary of the facts, supported by five Government documents pertaining to Egypt, marked as HE I and HE II. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. 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

The SOR alleged, and Applicant admitted, that his three sisters and four brothers are citizens and residents of Egypt, and that he has provided them approximately \$50,000 in support. Those admissions are incorporated into the following facts:

Applicant is 58 years old. He is currently working as a linguist in the Middle East. He was married from 1984 to 1992, when he was divorced. His ex-wife is a U.S. citizen. He has no children. He was born in Egypt and immigrated to the United States in August 1980, at the age of 20. He entered on a student visa. He was naturalized as a U.S. citizen in 1991. Before 2009, he worked in the restaurant industry. He has worked for his current employer, a government contractor, since 2009 with a break in service from November 2011 to August 2012. (GE 1; AE A; AE C; Tr. 16-23, 80, 100.)

¹ An email dated August 8, 2018, between myself, Department Counsel, and Applicant's attorney confirmed that no post-hearing exhibits were submitted. That email is marked HE III.

During his employment with the government contractor, he has been stationed overseas. He had deployed to combat zones on multiple occasions. (Tr. 84-86)

Applicant has traveled to Egypt three times, since leaving in 1980. He visited his mother in 1991. He returned again in 1992 to attend his mother's funeral. He visited again in 2015 to spend time with his siblings. He stayed with his oldest brother for two weeks during his 2015 trip to Egypt. (AE A; Tr. 36-38, 67-68, 88.)

Applicant had five brothers and three sisters who were citizens and residents of Egypt. However, one brother passed away in 2012 and one sister passed away in February 2017. Both died after suffering from cardiac arrest. (Tr. 28-32.)

Applicant's oldest brother is 75 years old. He worked site manager for a construction company, but has been retired for 15 years. He did not serve compulsory military service in the Egyptian military. Applicant last spoke to this brother in August 2017, to wish him well on an Egyptian holiday. Applicant testified that he has no sense of loyalty to his brother. His brother does not know of his work for the U.S. government or of his employment with a government contractor. (Tr. 32-40.)

Applicant's second brother is 70 years old. He is divorced. He worked for the same construction company their oldest brother was employed by, but is also retired. He served one-year mandatory military service for the Egyptian Army. He visited Applicant in the United States in approximately 1985 for six months on a tourist visa. Applicant contacts him two or three times a year by phone to inquire about his welfare. Applicant testified that he has no sense of loyalty to this brother. His brother does not know of his work for the U.S. government or of his employment with a government contractor. (Tr. 40-45.)

Applicant's third brother is 68 years old. He worked as a deputy chief operating officer for a private salt company, but has been retired from that position for eight years. He did not serve compulsory military service in the Egyptian military due to vision problems. Applicant communicates by phone with this brother four to five times per year. This brother does not know of his work for the U.S. government or of his employment with a government contractor. (Tr. 46-51.)

Applicant's fourth brother is 66 years old. He worked as a shift manager for a private steel company, but retired from that position at age 60. He served one-year mandatory military service for the Egyptian Army. Applicant communicates with him approximately three times each year. This brother does not know of his work for the U.S. government or of his employment with a government contractor. (Tr. 52-55.)

Applicant's surviving sisters are ages 73 and 62. The oldest sister has always been a homemaker. Her husband is deceased. His younger sister worked in a private department store, but is retired from that position. He communicates with them three to four times per year by phone. (Tr. 55-64.)

In 2014, Applicant wired a gift of \$50,000 to his third brother for the use of all of his siblings. He explained that when Applicant was in college in the United States, his siblings supported him. As the cost of living rose in Egypt, Applicant decided he wanted to repay them for their previous support. His siblings used this one-time gift for food and medicine. Economic conditions in Egypt have improved since 2015 and Applicant does not foresee the need to send them money again. (Tr. 72-76, 90.)

Applicant testified that his loyalty is solely to the United States. (Tr. 97-98.) He did not serve compulsory military service in Egypt, before immigrating to the United States. (Tr. 69.) He has no financial interests in Egypt, having given up his share of his parents' estate to his siblings. (Tr. 69-70.) He documented assets totaling \$500,000, consisting of savings, mutual funds, and stocks in the United States. (AE B; Tr. 70, 102-108.) However, he has no private residence in the United States at the current time, as he works overseas. (Tr. 102.) His belongings are in a storage facility. (Tr. 102.)

Applicant has been awarded certificates of appreciation for his exceptional services. (AE D.) His manager, who wrote a letter of support on Applicant's behalf, believes Applicant is "a mature, intelligent, self-motivated professional who has been an asset to [his] team." (AE E.) His manager has full confidence in his trustworthiness and fidelity. (AE E.)

Egypt

Relations between the United States and Egypt are grounded in the mutual commitment to advance peace, prosperity, and stability in the Middle East. President Trump has met with the Egyptian President and discussed opportunities to enhance the American-Egyptian partnership on a range of security and economic issues. (HE II.)

The U.S. Department of State warns U.S. citizens of threats from terrorist organizations operating in Egypt, including the Islamic State of Iraq (ISIL). U.S. citizens have been kidnapped and murdered by members of that organization. In 2015, the Egyptian government launched an effort to combat these terrorist organizations, but terrorist organizations succeeded in launching large-scale attacks in Cairo and other urban areas. (HE I.)

Throughout Egypt, political protests occur without warning and sometimes lead to violent clashes between police and protesters. Significant human-rights abuses including: excessive use of force by security forces; unlawful killings and torture; deficiencies in due process; and the suppression of civil liberties have been noted. (HE I.)

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 useful 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 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 *a/s/o* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern under 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. Two are 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; and
- (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.

Applicant has close connections to his siblings, who are all citizens and residents of Egypt. He contacts them each multiple times per year. Further, there is an articulated heightened risk associated with having ties to family members in Egypt, due to the activities of terrorist organizations and insurgents operating within its borders. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (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.

Applicant's emotional bonds to his siblings in Egypt have decreased since he immigrated to the United States over 30-years ago. He communicates with them only three to four times per year. While he sent them the significant gift of \$50,000 in 2015, it was a one-time gift and was meant to repay them for their previous generosity. He demonstrated sufficient relationships with the United States, which outweigh any risks associated with his siblings in Egypt. He is credited with his service in areas of conflict and having assets totaling \$500,000 in the United States. AG ¶ 8(b) provides mitigation.

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.

According to 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 applicable guidelines and the whole-person concept. Applicant served honorably as a linguist since 2009. His personal property and investments are all located in the United States. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me without doubts as to Applicant's suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for Foreign Influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a and 1.b: 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. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge