



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



In the matter of:

ISCR Case No. 17-03308

Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esq., Department Counsel

For Applicant: *Pro se*

May 3, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On October 16, 2017, 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 Guideline B. 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 November 29, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 6, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 13, 2018, scheduling the hearing for March 20, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 3, which were admitted without objection. Applicant testified on his own behalf. The record was left open until April 2, 2018, for receipt of additional documentation. Nothing, apart from

his testimony, was submitted by Applicant. DOHA received the transcript of the hearing (TR) on March 28, 2018.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Arab Republic of Egypt. (GX 3.) Department Counsel provided a 5-page summary of the facts, supported by five attached Items. 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

Applicant admitted to all the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Guideline B – Foreign Influence

Applicant is a 51-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since 2012. (GX 1 at pages 12~13.) He is married to a U.S. citizen, and has two teenage children by this third marriage. (TR at page 15 line 7 to page 20 line 10, page 22 line 23 to page 23 line 5, and GX 1 at pages 19~22.) Applicant's two prior spouses were also U.S. citizens. (*Id.*)

Applicant came to the United States in 1986 at the age of 19, and became a U.S. citizen in 1991. (TR at page 15 line 7 to page 20 line 10.) He owns three properties in the United States, valued well in excess of \$2,500,000. (TR at page 39 line 19 to page 43 line 9.) Applicant has an Egyptian sister and four Egyptian brothers, none of whom know Applicant's employer, nor what Applicant's work entails. (TR at page 24 line 10 to page 33 line 25, and at page 34 lines 1~13.)

1.a. Applicant's 63-year old sister is a citizen and resident of Egypt. (GX 1 at page 25.) She is a retired "Certified Public Accountant," and his contact with her is "infrequent." (TR at page 24 line 10 to page 26 line 7.) He last saw his sister in the "summer of 2012," when he was in Egypt on business for his employer. (TR at page 28 line 1~13.)

1.b. Applicant's 60-year old brother is a citizen of Egypt, but has resided in Kuwait for about the last 20 years. (GX 1 at page 26.) He works for "the Municipal City of Kuwait," maintaining its sewer system. (TR at page 26 line 8 to page 27 line 12.) He last saw this brother "over two and a half years ago." (TR at page 27 lines 16~25.)

1.c. Applicant's 59-year old brother is a citizen of Egypt, but resides in Saudi Arabia. (GX 1 at page 30.) He is an engineer, working with automobiles. (TR at page 28 line 14 to page 29 line 5.) Applicant's contact with this brother is infrequent. (*Id.*)

1.d. Applicant has 57-year old twin brothers who are citizens and residents of Egypt. (GX 1 at pages 27~29.) One is retired, and the other a construction inspector. (TR at page 29 line 6 to page 33 line 25.) Applicant's contact with these two brothers is also infrequent. (*Id.*)

1.e. Applicant co-owns with his spouse an apartment in the United Arab Emirates (Dubai) valued at about \$545,000. (TR at page 34 line 18 to page 39 line 18, and at page 47 line 15 to page 48 line 17.) He, with his immediate family, live in this apartment when he is employed by his U.S. defense contractor employer in Dubai. (*Id.*) Applicant also uses it as a vacation home. (TR at page 34 line 18 to page 39 line 18, and at page 47 line 15 to page 48 line 17.) The value of this apartment pales in comparison with the value of his property assets in the United States, as noted above.

1.f. Applicant also co-owns with his spouse an apartment in the Egypt valued only about \$20,000. (TR at page 20 line 11 to page 21 line 5, and at page 34 lines 14~17.)

Notice

I take administrative notice of the following facts regarding to the Arab Republic of Egypt (Egypt). The U.S. Department of State warns U.S. citizens of threats from terrorists groups in Egypt and to consider the risks of travel to the country. Political protests also occur without warning throughout Egypt.

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 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. 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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest

Applicant has Egyptian siblings living through the Middle East. He also owns an apartment in Dubai worth about \$545,000, and one in Egypt worth about \$20,000. 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:

(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;

(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;

(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; and

(f) 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.

Applicant's loyalties are to the United States, where he has lived since the age of 19, has an American wife and native born American children. His contact with his Egyptian siblings, two of whom are retired, is infrequent at best. Finally, the value of his Dubai and Egyptian apartments pale in comparison with the value of his properties in the United States. Foreign Influence is found for Applicant.

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 Guideline B in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the Foreign Influence security concern.

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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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