



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 14-04762

Appearances

For Government: Benjamin Dorsey, Esq.
For Applicant: Geoffrey S. Burke, Esq.

01/14/2016

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on August 21, 2012. On April 3, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant received the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 17, 2015. A notice of hearing was issued on October 21, 2015, scheduling the hearing for November 24, 2015. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted

Applicant's Exhibits (AX) A through I, which were admitted without objection. I received the transcript (Tr.) on December 2, 2015.

Procedural Issue

Department Counsel requested that I take administrative notice of certain facts regarding Egypt. Applicant did not object, and the documents proffered in support of the request were labeled Hearing Exhibit I and entered into the record. Applicant offered articles concerning Egypt, which were labeled as Hearing Exhibit II.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence). He provided additional information to support his response. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant was born in Egypt in July 1980. He attended high school in Saudi Arabia. He was educated in Egypt, attending university until 2005, but did not receive a degree. (GX 1) He decided in 2005 to leave Egypt permanently to pursue a career as a linguist in the United States. He is pursuing an undergraduate degree from an American university. He became a naturalized citizen in 2008. He has held a security clearance for about six years. Applicant has been with his current company since 2012, serving as team lead Arabic linguist. Before that he worked for a federal contractor on an overseas military installation for approximately six years. (Tr. 40)

Applicant married his wife, who is a U.S. citizen by birth, in 2003. He has two adult stepchildren who are U.S. citizens. His in-laws are U.S. citizens living in the United States. They were married in Egypt. Applicant's wife has met his family. She has many serious health issues. Applicant is the sole provider for the family.

Applicant's mother and father are citizens and residents of Egypt. They are both retired. His mother is ill. Applicant calls them one a month to check on their health. His father is a retired accountant. His parents have no ties to the Egyptian government. His parents own property in Egypt. Applicant is in the process of sponsoring them to come to the United States. His parents have no knowledge of Applicant's work. (Tr. 54)

Applicant has a sister who is a citizen and resident of Egypt. She recently graduated from university, and works as a translator. Applicant calls his sister every two to three months. His sister has no ties to the Egyptian government. She has no knowledge of Applicant's work.

Applicant has two sisters who are citizens of Egypt and reside in Saudi Arabia. They are both married to men who work for an American company in Saudi Arabia. He also has a brother who is a citizen of Egypt who resides in Kuwait. His brother is an

accountant. They have no ties to any foreign government. They do not know the nature of Applicant's work. He calls them every few months.

Applicant has no financial ties to Egypt. He has no investments, business or real property interests, or financial holdings abroad. He does not provide any support for his mother and father. He visited Egypt in 2011, 2013, and 2014 to see his family. (Tr. 63) He reported the visits to his company officer and followed requisite procedures for foreign travel. He is up-to-date with his security-related training and certifications.

Applicant's assets are in the United States. He and his wife live in the United States. His bank accounts and retirement accounts are in the United States. He has no desire to return to Egypt to live. He renounced his Egyptian citizenship and has no Egyptian passport. He is active in the local community. He has taken an "active interest" in his wife's grandchildren. His intent is to continue his life in the United States, and maintain his closeness with his wife and his step-children and grandchildren.

Applicant's supervisor testified that he hired Applicant in 2012. (Tr. 20) The supervisor testified that Applicant is very trustworthy. He always follows rules and procedures in a regulated environment. He is in charge of other linguists and demonstrates that he has a strong work ethic. Applicant has received security training on an annual basis. His supervisor stated that Applicant, if placed in a position where he had to choose between a family member in Egypt and allegiance to the United States, he has no doubt that Applicant would remain loyal to the United States. (Tr. 23)

A colleague testified that Applicant is a trustworthy and professional coworker. He demonstrates great skill and leadership ability. Applicant's colleague trusts him with classified information. (Tr. 29)

Applicant submitted three Certificates of Appreciation from 2011 and 2012 from commanding officers for Applicant's meritorious service while assigned overseas to a military installation. The certificates praise his linguistic capabilities along with his positive attitude, professionalism, and dedication to the mission. He excelled in a stressful and sensitive operation. Applicant was also praised for his work in a demanding and dangerous environment. His cultural training, mentorship, and technical expertise had a direct and positive impact on a joint military human intelligence operation. (AX F-H)

Applicant provided five letters of recommendation from both military officers and colleagues. Each letter attests to Applicant's exemplary work, dedication, and support to the mission. He is described as hard-working conscientious, honest, peace-loving and professional. (AX A)

Applicant's service as an interpreter assigned to the Linguist Support Section has made him one of the go-to linguists in a pool of nearly one hundred. (AX B) He has a

strong sense of mission accomplishment. He works tirelessly and can be counted on to meet critical deadlines. He is a talented and dependable linguist.

One of Applicant's former supervisors overseas for one year praises his skill level and ability and willingness to take on any new assignment. He has terrific interpersonal skills when dealing directly with the military or contractors. He has been involved in interrogation translations. (AX C)

Applicant is described by a colleague who has known him for six years as having outstanding work habits. He displays a high degree of responsibility on and off the job. He is a loyal family man and a good friend. He is trustworthy and capable of protecting government properties. (AX D)

Applicant exhibits good judgment under difficult circumstances. He loves the career choice serving as an Arabic translator. He has the utmost respect for authority and those around him. He is well liked by his supervisors and co-workers. (AX E)

Administrative Notice

Egypt is the most populous country in the Arab world and the second-most populous on the African continent. Egypt is undergoing a historic political transition after a popular revolution which began in January 2011 and forced the resignation of Egyptian President Hosni Mubarak. Although U.S. policy toward Egypt has long been framed as an investment in regional stability in the Middle East, the relationship has now entered a period of profound uncertainty. In the wake of Mubarak's resignation, a Supreme Council of the Armed Forces (SCAF), consisting of military officers in leading positions under Mubarak, exercised executive authority, but officially ceded power to newly elected president Muhammad Morsi on June 30, 2012. President Morsi has since consolidated power around his administration and a broader network of Muslim Brotherhood supporters at the expense of the military. On July 3, 2013, the Egyptian military ousted President Morsi from power. In mid-August, the army-backed government, which has ruled Egypt since the July 3 ouster began a violent crackdown against Morsi's mostly Islamist supporters, and arrested many leaders and members of the Muslim Brotherhood. On August 14, 2013, the Government of Egypt declared a State of Emergency.

In the past, the United States and Egypt have enjoyed a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, revitalizing the Egyptian economy, strengthening trade relations, and promoting regional security. Yet, even taking into account their mutual interests and military cooperation, U.S.-Egyptian opportunities for diplomacy may be overshadowed by disruptive trends that have been unleashed by the "Arab Spring," allowing for more anti-Americanism, radical Islamist policies, and antipathy towards Israel and sectarianism.

There have been instances of instability and public disorder in areas of Egypt. Recently, demonstrations in downtown Cairo, near Tahrir Square turned violent and

resulted in numerous deaths and injuries. In the last year, demonstrations have degenerated on several occasions into violent clashes between police and protesters, in some instances resulting in deaths and injuries.

Egypt has suffered from numerous terrorist attacks over the years. Major terrorist attacks, where foreigners have either been killed or kidnapped, have occurred as recently as July 2012. Americans have been the victims of some of these terrorist attacks.

Criminal networks that may be associated with terrorist groups in the region, including Hezbollah, have used tunnels located in Egypt to smuggle humans, weapons, and other contraband into Israel and the Gaza strip. In addition to terrorism, extremist activity in certain areas of Egypt has created instability and public disorder. The government continues to build and augment its capacity to counter terrorism and extremist ideologies.

Egypt is a country in transitional turmoil. Egypt is now mainly under the control of an interim government managed by the military. However, Egypt has been a staunch ally of the United States since the time of Anwar Sadat and the Peace Treaty with Israel in the 1970's.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

As a threshold issue, it is noted that while Egypt does not target United States citizens to obtain protected information. However, nongovernmental terrorists operate in, and terrorist activities take place, within its borders. Moreover, while Applicant has affection for his parents and siblings, it is clear that his familial loyalty to his wife and family is reciprocal and superior to his kin in Egypt.

Two disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “contact 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.” AG ¶ 7(a). In addition, AG ¶ 7(b) provides that “a connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information” is a disqualifying condition.

AG ¶¶ 7(a) and 7(b) are raised by Applicant’s relationship with his parents and siblings who live in Egypt, in Saudi Arabia and Kuwait. It is undeniable that Applicant has ties of affection for his parents and his siblings. He speaks to them by telephone every two or three months. He has visited his family in Egypt in 2011, 2013, and 2014. Such ties maintained with citizens and residents of Egypt constitute a heightened risk of foreign influence.

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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The mere possession of close ties with a family member in Egypt is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could possibly result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case NO. 99-0424 (App. Bd. Feb. 8, 2001).

While there is no evidence that intelligence operatives, terrorists, or criminals from Egypt seek or have sought classified or economic information from or through Applicant, his parents, or his siblings, it is not possible to rule out such a possibility in the future. The Government produced substantial evidence to raise the potential of foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing “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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” AG ¶ 8(b).

AG ¶¶ 8(a) and 8(b) are applicable. Applicant’s parents and siblings are citizens of Egypt. They do not reside in the United States. Applicant does have some telephone contact with his family during the year. The amount of contacts between an applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced or influenced through their relatives.

AG ¶ 8(b) is applicable. Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 2005. Egypt is an ally of the United States with mutual defense and strategic interests. Egypt is a substantial trading partner of the United States and cooperates with the United States on many military matters. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. I have also considered the ongoing situation in Egypt’s unstable government, extensive terrorist activities, and human rights issues. Even though Egypt is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that the situation and groups in Egypt could take an action that may jeopardize their friendly position with the United States. There are some indications that elements in Egypt could seek sensitive information from their citizens who have family in the United States.

Applicant has strong ties to the United States. He left a life in Egypt to work as a linguist for the United States military. He is a naturalized citizen who has spent about six years working directly with the military in this country. His wife was born in the United States and his stepchildren are U.S. citizens. He has grandchildren in the United States. He has financial stability in the United States. He has firm ties to the United States and considers it his home. He embraced the culture, history and lifestyle of the United States.

Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. There is no risk to the national interest if Applicant has access to classified information. Applicant has met his heavy burden to show that his family living in Egypt does not cause a security concern.

Applicant's history and conduct show that he is unlikely to make decisions that would harm the United States. On the contrary, he has spent many years in the United States supporting the U.S. military. Applicant has been praised for his valuable work in various missions overseas.

Whole-Person Concept

Under the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are substantial facts supporting mitigation of security concerns. Applicant has lived in the United States since 2005. He is a naturalized citizen, and his wife is an American citizen by birth. His stepchildren are U.S. citizens. He has grandchildren in the United States. Applicant has been quite successful in his work. He and his wife share a

life in the United States. Applicant has received three certificates of appreciation for his work with the military. He is praised by his former military supervisors for his many years of dedication. He would resolve any issues in favor of the United States.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

Conclusion

In view of all the circumstances presented 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.

Noreen A. Lynch
Administrative Judge