



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-09003
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: -----, Personal Representative

March 13, 2008

**Decision**

HOWE, Philip S., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 28, 2006.. On November 8, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence) for Applicant. The action was taken 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on November 26, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on November 27, 2007. Department Counsel was prepared to proceed on December 14, 2007, and I received the case assignment on December 17, 2007. DOHA issued a Notice of Hearing on December 17, 2007, and I convened the hearing as scheduled on January

8, 2008. The Government offered Exhibits (Ex.) 1 through 5, which were received without objection. Applicant testified, witnesses testified on his behalf, and he submitted Exhibits A through K, without objection. DOHA received the transcript of the hearing (Tr.) on January 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Egypt and Saudi Arabia. (Tr. 20) The request and the attached documents were admitted into evidence and included in the record as Hearing Exhibit 4. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated November 26, 2007, Applicant admitted the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 48 years old, born in Egypt, married and divorced from an Egyptian woman, who is presently in an Egyptian jail on corruption charges. Applicant's former wife filed 22 legal cases against him in Egypt to harass him, and prevented him for six years from obtaining possession of the apartment his father bought for them when they were first married. Applicant is now married to an American woman he met on one of his previous trips to the United States. They married in Egypt in 2001. Applicant immigrated in July 2001. He returned to Egypt in early September 2001, to bring his two children, now 19 and 17 years old, to the United States. Applicant's former wife has almost no contact with the children in the United States, and they have no desire to return to Egypt to see their mother. The 19-year-old son was born in the United States on one of Applicant's previous trips to the United States for academic purposes. Applicant became a naturalized United States citizen in December 2006. (Tr. 15, 38, 40-57, 62, 64, 103; Exhibits 1, 2, 3, A; Answer)

Applicant had an Egyptian passport when he traveled to the United States from 1981 to 2001 for various academic studies, including doctorate work in his scientific speciality field. He used it to immigrate to the United States in 2001. He destroyed the Egyptian passport on December 17, 2007, in the presence of his corporate security officer by tearing the pages from the document and shredding them. Applicant believed he renounced his Egyptian citizenship when he took the oath of U.S. citizenship in 2006. He is willing to renounce again his Egyptian citizenship. (Tr. 15, 38, 40, 41, 62, , 84; Exhibits 2, 3, 5; Answer)

Applicant has no intention of returning to Egypt at any time. He has not traveled to Egypt since coming to the United States in 2001. Applicant does not want to return to

Egypt, prefers the United States, and wants to build a new life for himself in the United States. He wanted to come to the United States since he was 15 years old. Applicant saw what life was like in the United States over the twenty years he traveled to the United States for courses and as a visiting scholar, and wanted even more to move here. Applicant was a lecturer, assistant and then associate professor at an Egyptian university from 1981, when he received his Ph.D. from an Egyptian university after doing course work for the degree in the United States, under a cooperative arrangement between the two countries, until he departed Egypt in 2001. Applicant's parents live in Egypt. His father is 82 years old and ill with various ailments, including senility and diabetes. His mother is 68 years old, and also is ill with breast cancer. Applicant speaks to them on the telephone about twice a month, but admits he cannot take care of them, or do anything for them. Applicant does not own property in Egypt, or anywhere outside of the United States. Applicant has one brother who is a physician now working in Saudi Arabia on contract. The brother is doing so to make money, and then will return to Egypt. Applicant's contact with his brother is once or twice a year, because the brother is very busy in his medical work, and does not use the internet. Applicant also had some uncles who immigrated to the United States in 1967, and became naturalized U.S. citizens. (Tr. 13, 30, 41-43, 53; Exhibits 1-3, A, K; Answer)

Applicant is a scientist who speaks Arabic. He has never had a security clearance in the United States. He is offered a job with a defense contract reading scientific texts in Arabic and interpreting them. (Tr. 26, 36; Exhibits 2, 3, A)

Applicant is highly regarded by his wife's parents as a good husband and parent to his wife's two children, and to Applicant's two children. His supervisors and colleagues rate him as enthusiastic, honest, serious, and hard-working. (Tr. 66-100; Exhibits G-J)

I take administrative notice of these facts concerning Egypt: Egypt has been an organized country for about 5,000 years. The Arab Republic of Egypt is the most populous country in the Arab world, with nearly 79 million people. Life expectancy is 71 years. It is a republic with a growing economy and a strong executive in its government. There is also an elected Parliament with some members appointed by the President of the Republic. It has an appointed judiciary. Egypt and the United States enjoy a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, strengthening trade relations, and promoting regional security. However, the terrorist threat remains high in Egypt despite its pursuit of terrorists. According to the 2007 National Counterintelligence Strategy of the United States, terrorists use overt, covert, and clandestine activities to exploit and undermine U. S. national security interests. Terrorist organizations currently target the United States for intelligence collection through human espionage and by other means. Egypt's human rights record is poor and serious abuses continue in many areas. Torture, arbitrary arrest, prolonged detention, poor prison conditions, denial of fair trial and lack of due process, executive branch limits on an independent judiciary, political prisoners and detainees, and restrictions on freedom of speech, press, assembly, and association are some of the problem areas.

I also take administrative notice of these facts: Saudi Arabia is a monarchy in the Middle East. It is ruled by one family. There are no political parties or national elections. There are significant human rights problems. The religious police harass and abuse individuals to force them to comply with religious actions and customs. However, Saudi Arabia and the United States share a common concern over regional security. The United States relationship with Saudi Arabia was strained after the attacks on New York and Washington, D.C., on September 11, 2001, because the overwhelming majority of terrorists operating in those attacks were from Saudi Arabia. There have been other terrorists attacks against United States citizens since 2001. These attacks necessitated the U.S. State Department to issue a travel warning for Saudi Arabia because of the terrorist activities targeted against U.S. citizens and interests. Saudi Arabia believes in fighting terrorism in its own country, has taken steps to curtail terrorist activities within its borders, and has had some successes. The United States and Saudi Arabia have cooperated in countering certain terrorist activities.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised 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, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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 access to classified information 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. 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, 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 as to obtaining 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 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 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 C: Foreign Preference**

The security concern under this guideline is set forth in AG ¶9 as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Under AG ¶10(a)1, a disqualifying condition that could raise security concerns under these facts is “the possession of a current foreign passport.” The evidence, including Applicant’s admissions, is sufficient to raise this potentially disqualifying condition. Applicant had an Egyptian passport, which he used to travel to and from the United States between 1981 and 2001 for various academic courses. The latest issuance of that passport was November 8, 2002. That passport was due to expire on November 7, 2009.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut or mitigate the allegations. Under AG ¶11, there are six potential Mitigating Conditions (MC). There are two MC that are possibly applicable here. ¶11(b), “the individual has expressed a willingness to renounce dual citizenship,” and ¶11 (e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” pertain to the situation in which an Applicant has foreign citizenship and a foreign passport while seeking a clearance.

Applicant testified he thought he renounced his Egyptian citizenship when he became a U.S. citizen in December 2006. Applicant expressed a willingness to do so again to remove any doubt that it had been done.

MC ¶11(e) requires the passport be destroyed or invalidated before the Government considers granting the security clearance. On December 17, 2007, Applicant destroyed his Egyptian passport by tearing the pages out of the passport and shredding them in the presence of a corporate security officer. Therefore, both mitigating conditions prevail under this guideline.

### **Guideline B: Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6: under this guideline is as follows:

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.

AG ¶7 describes nine conditions that could raise a security concern, two of which may be disqualifying in this case: (a) “contact with a foreign family member 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.”

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb.15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant’s parents and brother are citizens of Egypt and reside there. Presently, his brother works in Saudi Arabia as a physician. He has telephone contact with his parents. He only speaks with his brother about twice a year.

The Government produced substantial evidence of these disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. Two Foreign Influence Mitigating Conditions under AG ¶8 are potentially mitigating.

(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 the foreign individual 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 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. interests); 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 established application of ¶8(a) and ¶8(c). From the evidence at the hearing, there is little risk of Applicant being placed in a position to be coerced, and there is no conflict of interest situation in which Applicant could be placed because of his relationships with his parents and brother. Egypt and the United States, and Saudi Arabia and the United States, are allies and have strong friendly relations based on mutual interests of Middle East peace and stability. Applicant's father has senility and is retired from his private business. He is 82 years old in a country where life expectancy is 71 years of age. Applicant's mother is 68 and ill. His contact is limited to periodic telephone calls. His brother is a non-political physician who works in Saudi Arabia because the pay is better there than in Egypt for his profession. Applicant has limited contact with him. His familial contacts are so infrequent that there is no risk in them for Applicant to be the object of foreign influence or exploitation by Egypt or Saudi Arabia.

Applicant established application of ¶8(b). Based on his relationship and loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the U.S. interest. Applicant expressed repeatedly and forcefully that he loves the United States and had wanted to move here for at least 20 years. He spent much time since 1981 in the United States studying and working with U.S. scientists. The unhappy collapse of his first marriage, and the desire to get his children out of Egypt, coupled with his marriage to a U.S. citizen in 2001, convince me his loyalties and attachments are to the United States. He has not returned to Egypt since he came to the United States in 2001, and has no intention of traveling back there. It is unlikely that he will be placed in a compromising position between Egypt, Saudi Arabia, and the United States.

### **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(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) 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. Applicant's strong attachment to the United States, his long standing desire to live here, and his 2006 naturalization demonstrate that his "whole person" is focused on building a life for himself in the United States. He has effectively renounced all association with Egypt, and he never had any with Saudi Arabia. He has not returned to Egypt, and he rather forcefully declared he would not travel there in the future.

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 Applicant mitigated the security concerns arising from his foreign preference, foreign influence security concerns. I also conclude the "whole person" concept for Applicant.

### **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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 2.b:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge