



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



In the matter of: )  
)  
) ISCR Case No. 12-01822  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Eric A. Eisen, Esq.

02/28/2014

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s connections to family members and friends in Egypt are outweighed by her connections to family members and friends in the United States. She has established deep and longstanding relationships and loyalties in the United States. Her financial interests in Egypt are *de minimis* when compared to her financial and property interests in the United States. She can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 21, 2010, Applicant submitted a security clearance application (SCA). The Department of Defense (DOD) issued a statement of reasons (SOR) to her, alleging security concerns under Guideline B (foreign influence), Guideline K (handling protected information), and Guideline E (personal conduct) on March 5, 2013.<sup>1</sup> Applicant answered the SOR on March 25, 2013, and requested a hearing before an administrative judge.

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<sup>1</sup> The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

The case was assigned to me on November 21, 2013. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on November 27, 2013, scheduling a hearing for December 17, 2013. Applicant requested a postponement, and the hearing was rescheduled for January 15, 2014. At the hearing, the Government offered exhibits (GE) 1 through 3. GE 1 and 2 were admitted without objection. GE 3 is a request for me to take administrative notice of facts concerning Egypt. Department Counsel provided supporting documents to show detail and context for those facts. Applicant did not object and I took administrative notice as indicated in this decision. GE 3 was considered, and attached to the record, but not admitted into evidence.

Applicant testified and presented nine exhibits (AE A through I), which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 23, 2014.

### **Procedural Issue**

On November 6, 2013, Department Counsel moved to amend the statement of reasons by withdrawing the allegation in SOR ¶ 1.c, and by withdrawing SOR ¶¶ 2 and 3, in their entirety. (Appellate Exhibit 1) I granted the amendment.

### **Findings of Fact**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a, 1.d, and 1.e. She denied the allegation in SOR ¶ 1.b. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 55-year-old linguist employed by a government contractor. She was born and raised in Egypt to Egyptian parents. She completed her bachelor's degree in Egypt in 1983. Her college education was funded by the Egyptian government. After college, she worked for a private company for a period. (Tr. 16) She never married and has no children.

Appellant's father passed away when she was 13 years old. Her mother passed away in 1987. After her mother passed away, Applicant entered the United States under a six-month tourist visa in 1988, which she later extended for another six months. She came to the United States to be close to her older sisters, who were living in the United States. She helped her sister by taking care of her sister's children. Applicant attended college in the United States during 1989-1990, and changed her tourist visa to a student visa. She then obtained a job with another foreign government mission in the United States and received a work visa. Applicant then applied for and received religious asylum. She is a practicing Coptic Orthodox. (AE G)

Applicant became a naturalized U.S. citizen in 2001, and received her U.S. passport in 2009. She considered herself a dual citizen of Egypt and the United States until 2002, when her Egyptian passport expired. She never renewed her Egyptian

passport. Applicant travelled to Egypt in 1996, 1999, and November 2005, to visit her family and friends. During each visit, she stayed in Egypt for approximately 15 days.

Between 2000 and early 2006, Applicant worked for private companies in the United States, but she was unemployed during the latter part of 2006. From January 2007 to March 2009, she worked as a linguist for a government contractor in Iraq providing support to U.S. personnel. Applicant was granted a secret security clearance in 2008. She possessed the clearance, without any concerns, until she was let go from her job when her employer lost its government contract in August 2013. Applicant received a thank you letter, signed by a brigadier general, and a certificate of appreciation for her dedication, hard work, and sacrifice while translating documents for U.S. forces in Iraq during 2007-2008. (AE A)

Applicant worked for another government contractor as an Arabic linguist from August 2009 to August 2013. She received a National Intelligence Meritorious Unit Citation for meritorious service and exceptional achievement during 2011-2012. (AE A) Her performance evaluations indicated she was considered to be a very good employee. Her employment ended when the contractor lost its government contract, but she was in good standing with the company and was eligible for rehire. (AE B)

Applicant's brother and his wife are citizens and residents of Egypt. Her two nephews are citizens of Egypt, but they currently are residents of the United States. She has monthly contact with her brother. One of her nephews was a soldier in the Egyptian army. Applicant testified that her brother was a resident of the United States and worked as a machinist until he retired from his job. After his retirement, he returned to live in Egypt. Her nephews are currently working and attending colleges in the United States. They immigrated to the United States because of religious discrimination in Egypt. Additionally, she has long-time friends with whom she has contact who are citizens and residents of Egypt. She has contact with her Egyptian friends four times a year.

Applicant's sisters, her husbands, and their children are naturalized U.S. citizens residing in the United States. One of her brother's-in-law was a soldier in the Egyptian army. Applicant's boyfriend is a naturalized U.S. citizen residing in the United States. He also was a soldier in the Egyptian army.

Applicant has an Egyptian bank account with a value of \$4,747. When her father passed away, she and her siblings inherited a pension paid by the Egyptian government. She receives \$100 a month from her father's pension. (Tr. 39) When she immigrated to the United States, Applicant gave a power of attorney to a banker to manage the pension bank account for her. (Tr. 35-39) Following her instructions, the banker provided some of the money to her brother for him to send it to her or to donate to her church. Applicant denied having any additional property or financial interests in Egypt.

Applicant testified that the Egyptian government suspended the payment of her pension. She explained that she has to submit evidence that she is alive and married for the pension to be reinstated. Also, the power of attorney expired and she would have to

travel to Egypt to establish a new power of attorney. She has not travelled to Egypt since 2005. She does not intend to travel to Egypt again. She requested her brother to help her close her Egyptian bank account, but she believes she would have to go to Egypt to close it. She also believes that the bank account will be closed by attrition. The pension is no longer being paid, and in time, the bank fees will consume the money in the account.

Applicant's U.S. assets include two investment accounts with a value of over \$20,000, a retirement account worth \$7,687, a \$191,967 bank account, and two real estate properties. She testified she purchased one of the properties in 2003 for \$235,000 with a down payment of \$60,000. She said she put a \$150,000 down payment on a second property in July 2012. (AE I - The deed, however, indicates the only consideration given to the grantor was \$10.00.)

Applicant submitted several references' statements. She is considered to be competent, dependable, and dedicated professional. In their opinion, Appellant is trustworthy, and she is committed to the United States. A fellow linguist who worked with her in Iraq stated that in her free time, Applicant volunteered to work in U.S. military hospitals. (Tr. 21)

I take administrative notice of the following facts concerning Egypt and its relations with the United States:

Egypt is the most populous country in the Arab world. In the past, it has been a strategic partner of the United States and the two countries have enjoyed a strong friendly relationship. The United States is facing a series of challenges stemming from dramatic changes in Egypt.

On July 3, 2013, the Egyptian military ousted former President Muhammad Morsi from power. In August 2013, the military-backed government began a violent police crackdown against Morsi's Islamist supporters, which include members of the Muslim Brotherhood. Since then, radical groups have waged an insurgency against the security services. Militants from Al-Qaeda groups have attacked police, army, and government facilities, employing terrorist and guerilla warfare tactics.

Political protests and demonstrations have turned violent. There are instances of instability, public disorder, and extremist activity in Egypt. The U.S. State Department issued a travel alert to U.S. citizens traveling to or living in Egypt about the continuing possibility of political and social unrest, incidents of which led to recent violence. Due to the political climate, there is a potentially more permissive operating environment for criminal and terrorist groups, including Al-Qaida, which the U.S. State Department designated a foreign terrorist organization.

Human rights abuses are rampant in Egypt. Violent clashes with police at demonstrations are a continuing concern. Problems also include torture, arbitrary arrests, limits on the judiciary, and restrictions on civil liberties.

Egypt considers all children born to Egyptian fathers to be Egyptian citizens even if the child is not issued an Egyptian birth certificate or passport. Dual nationals residing in Egypt for more than six months require proof of Egyptian citizenship. Male dual nationals staying in Egypt for more than six months and who have not completed military service must obtain an exemption certificate before they can leave. Individuals who travel to Egypt on their Egyptian passport are normally treated as Egyptian citizens. The ability to provide U.S. consular assistance to those traveling on Egyptian passports is extremely limited.

## **Policies**

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Foreign Influence

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (a) 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;
- (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; and
- (d) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

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.<sup>2</sup>

Applicant has frequent contacts and a close relationship of affection and obligation with her brother and his family, and with long-time close friends, who are citizens and residents of Egypt. The extent of her close relationship with her relatives is

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<sup>2</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

demonstrated by her frequent contacts with them. She visited Egypt in 1996, 1999, and 2005. She also was receiving a pension from the Egyptian government, and has \$4,747 in a bank account in an Egyptian bank.

These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Egyptian agents, criminals, or terrorists operating in Egypt may exploit the opportunity to obtain sensitive or classified information about the United States. With its negative human rights record and its government disfunction, it is conceivable that Applicant or her family members could be subject to coercion.

The Government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six 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, 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;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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 left Egypt in 1988, at 30, to be close to her sisters and their families in the United States. She has lived in the United States for over 25 years. She became a naturalized U.S. citizen in 2001. During this period, Applicant travelled to Egypt in 1996, 1999, and 2005. She vacationed in Egypt for approximately 15 days in each occasion. She has no intention to travel to Egypt again. She has established deep and longstanding relationships and loyalties in the United States. The last time she visited Egypt was nine years ago. Her Egyptian passport expired in 2002, and she never renewed it.

Applicant has significant property and financial interests in the United States, including two investment accounts (\$20,000), a retirement account (\$7,687), a \$191,967 bank account, two real estate properties with an estimated purchase price of over \$400,000, and her job. From January 2007 to August 2013, Applicant worked for government contractors and held a secret clearance without any proven security incidents. She worked as a linguist in Iraq providing support to deployed U.S. personnel, and in an important translation of documents project for a U.S. agency. She was commended for her performance on both occasions. Additionally, she has strong ties in their community as shown by her participation and involvement in the Coptic Orthodox church.

Applicant has a strong affection and sense of obligation to her brother and his family, as well as to her friends residing in Egypt. Notwithstanding, her brother's sons and her sisters (and their families) are living in the United States. Her sisters are naturalized U.S. citizens. Because most of Applicant's relatives are living outside of Egypt, the security concerns are less. It is unlikely that the government of Egypt will be able to use Applicant's relatives living outside of Egypt to manipulate or coerce her.

Considering the evidence as a whole, Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives, friends, and associates who are Egyptian citizens and living in Egypt] could create a risk for foreign influence or exploitation." AG ¶ 8(a) has limited applicability and does not mitigate the foreign influence concerns.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family and friends living in Egypt. Although there is no evidence that Egyptian government agents, criminal elements, or terrorists have approached or threatened Applicant or her family living in Egypt because of her work for the United States, she is nevertheless potentially vulnerable to threats and coercion made against her family living in Egypt. Egypt currently has no interests inimical to those of the United States. Notwithstanding, there is a lot of political and social unrest in the country. It is possible that a new Egyptian government could actively support terrorism and be repressive to its own citizens. The U. S. State Department has warned of the danger of travel to Egypt for both solely U. S. citizens and those holding dual citizenship with Egypt.

A key factor in the AG ¶ 8(b) analysis is whether Applicant has "deep and longstanding relationships and loyalties in the U.S." Applicant worked for government

contractors since 2007, and held a clearance. There is no evidence that she ever compromised or caused others to compromise classified or sensitive information. There is no evidence of any security concerns or issues concerning her ability to protect classified or sensitive information.

Applicant's sisters and their families, and her boyfriend are U.S. citizens living in the United States. Applicant has significant financial and property interests in the United States. She credibly testified that her loyalty is to the United States. She was deployed to Iraq in support of U.S. personnel in that country. Additionally, she provided valuable services to U.S. agencies translating important documents. Her actions show that she intends to live and retire in the United States. Applicant's actions show that "[she] can be expected to resolve any conflict of interest in favor of the U.S. interest."

AG ¶ 8(c) applies in part with respect to Applicant's brother and her extended family members living in Egypt. Their contact and communication is infrequent; however, she cannot establish that there is little likelihood that it could create a risk of foreign influence. AG ¶ 8(d) does not apply because Applicant's contacts and relationships with his family in Egypt are not on behalf of the U.S. Government. AG ¶ 8(e) is not raised by the facts in this case and do not apply. AG ¶ 8(f) applies because the value of Applicant's financial interests in Egypt is outweighed by her financial and property interests in the United States. It is unlikely that she would be subject to influence or pressure based on her Egyptian pension or bank account.

In sum, Applicant's connections to her brother, extended family members, and friends living in Egypt are outweighed by her connections to her siblings, extended family members, and friends living in the United States. She has established deep and longstanding relationships and loyalties in the United States and she can be expected to resolve any conflict of interest in favor of the United States. The mitigating information taken together is sufficient to fully overcome the foreign influence security concerns under Guideline B.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines B in my whole-person analysis. Considering the evidence as a whole, including her service in Iraq and in the United States in support of U.S. interests, I find that Applicant's favorable evidence is sufficient to demonstrate that her contacts and financial interests in Egypt do not pose a security risk.

I have carefully assessed Applicant's demeanor and sincerity at her hearing, and I find her statements to be credible. I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude

Applicant has carried her burden and foreign influence concerns are mitigated. Eligibility for access to classified information is granted.

### **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.b, 1.d, and 1.e:	For Applicant
Subparagraph 1.c:	Withdrawn
Paragraph 2 Guideline K:	Withdrawn
Paragraph 3, Guideline E:	Withdrawn

### **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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JUAN J. RIVERA  
Administrative Judge