



On June 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) in effect as of September 1, 2006. The SOR alleges security concerns under Guidelines C (Foreign Preference), B (Foreign Influence), and F (Financial Considerations).

Applicant answered the SOR in writing on July 17, 2007, admitted all the allegations, offered explanations, and requested a hearing. The case was assigned to me on August 16, 2007, and heard as scheduled on September 20, 2007. I kept the record open until September 28, 2007, to enable Applicant to present additional documentary evidence. I received his submission on September 28, and it has been admitted as Applicant's Exhibit (AX) B. DOHA received the transcript (Tr.) on September 26, 2007.

### **FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 45-year-old information technology architect for a defense contractor. He held interim clearances in the past but has never held a final clearance (Tr. 9). He is a native of Lebanon.

After graduating from high school in Lebanon, Applicant came to the U.S. in 1983 to continue his education. He completed his education in May 1990, receiving a bachelor's degree and a master's degree in computer engineering.

Between January 1987 and January 1990, a Lebanese foundation lent Applicant a total of \$56,368 to pay his tuition, books, fees, and living expenses. The foundation is a family-owned, non-political, nonprofit organization (Tr. 154-55). Foundation loans are available only to Lebanese students. The loan is interest-free with no due date for repayment (Tr. 39-40, AX A). Students apparently are expected to return to Lebanon upon completing their education, but Applicant obtained a waiver from the foundation that permitted him to remain in the U.S. (Tr. 101-02). Monies received in repayment of loans from the foundation are used to assist other Lebanese students (Tr. 42). The foundation has made no effort to collect the loan, but Applicant contacted the foundation to discuss repayment (Tr. 43-44). About a month before the hearing, he made one payment of \$200 (Tr. 41).

Applicant currently earns about \$130,000 per year (Tr. 36). He owns his home and a rental property in the U.S. which he estimates are worth about one million dollars (Tr. 171).

Applicant was married in March 2000 to a citizen of South Africa and divorced in April 2002. They had a daughter, born in February 2002, for whom he pays child support. His daughter is a U.S. citizen residing in the U.S. His ex-wife lives in the U.S. and has a U.S. permanent resident

visa. Applicant has contact with his ex-wife and daughter weekly, and he sees them twice a year (GX 2 at 5).

Applicant was engaged to a Lebanese citizen in October 2002. They terminated their relationship in July 2004 (Tr. 58). They had no contact after they terminated their relationship (Tr. 59).

Applicant married his current wife, also a citizen of Lebanon, in October 2004. His current wife resides with him in the U.S. and intends to become a U.S. citizen (Tr. 53). Applicant has a 14-month-old son from this marriage, who is a native-born U.S. citizen, and his wife is pregnant with their second child.

After Applicant became a naturalized U.S. citizen in June 2002, he retained and used his Lebanese passport for convenience when he visited Lebanon (GX 2 at 3). He traveled to Lebanon three times in 2002, to visit family and become engaged to marry (Tr. 114-20). He traveled to Lebanon three times in 2004, to visit family, terminate his engagement, and become engaged to his current wife (Tr. 120-31). He traveled to Lebanon again during the Christmas holidays in 2004-2005, for his wedding to his current wife in July 2005, and for the Christmas holidays in 2005-2006 (Tr. 133, 137-43).

Applicant testified he is willing to relinquish his Lebanese passport, but he has not done so (Tr. 32). His Lebanese passport expires in March 2010.

Applicant is the oldest of three brothers. The next oldest is a citizen and resident of Lebanon, but he spends several months a year in the U.S. (Tr. 64-65). He is involved in an automotive business in Lebanon (Tr. 66). Applicant has contact with him once every month or two (Tr. 65).

Applicant's youngest brother is a Lebanese citizen who resides in the U.S. and owns a moving company in the U.S. (Tr. 72-74). Applicant believes this brother intends to become a U.S. citizen (Tr. 73). His brother's wife is a Lebanese citizen, and they have three children, all U.S. citizens (Tr. 76).

Applicant's sister is a citizen and resident of Lebanon. He had no contact with her for several years, because he disapproved of her husband (Tr. 98). His sister contacted him about six months ago, but they have had no further contact (Tr. 87-88).

Applicant's half-sister is a citizen and resident of Lebanon (Tr. 88). Applicant talks to her about once a month (Tr. 79). She is married to a Lebanese school teacher (Tr. 99).

Applicant's mother-in-law, father-in-law, and brother-in-law are citizens and residents of Lebanon. His mother-in-law and father-in-law are divorced. His mother-in-law is now in the U.S. to assist them when the new baby arrives, but she intends to return to Lebanon in December or January (Tr. 90). Applicant and his wife have no contact with his father-in-law (Tr. 91).

Applicant's brother-in-law is a citizen of Lebanon. He resides temporarily in the United Arab Emirates while working there, but his permanent residence is in Lebanon (Tr. 29, 93). He is a

foreman for a construction company (Tr. 94). Applicant and his wife talk to him once every month or two (Tr. 94-95).

Applicant traveled to Syria on several occasions while his parents were alive, because they worked in a grocery store in Syria. He also traveled to Syria in 2004 to arrange for his current wife's travel to the U.S., because the U.S. consulate in Lebanon was not operating (Tr. 131-32). He testified he dislikes Syria for personal and political reasons (Tr. 31).

After Applicant's parents died, he inherited two apartments, a family home, and a family farm in Lebanon. The apartments are in Beirut, and the family home and farm are in a rural area (Tr. 30).

The apartments are worth a total of about \$50,000, and they are managed by a commercial rental agency. One rents for about \$150 per month and the other for about \$200 per month (Tr. 144-45). Applicant testified that he makes no profit from the rentals, because any profits are given to his family members in Lebanon (Tr. 146-47).

The family home and farm are worth between \$100,000 and \$120,000. They are managed and operated by cousins (GX 2 at 7; Tr. 151). Applicant talks to his cousins infrequently, about three or four times a year (Tr. 85). Any profits from the farm are kept by the cousins who operate it (Tr. 154).

Applicant also has a bank account in Lebanon, with a balance between \$2,000 and \$3,000 (Tr. 148). He testified he opened the bank account when he went to Lebanon to be married, but he no longer needs it (Tr. 30). Because there is no internet access, he would be required to travel to Lebanon to close the account (Tr. 145).

At Department Counsel's request and with no objection by Applicant, I took administrative notice of relevant facts concerning Lebanon. Department Counsel's request to take administrative notice is incorporated in the record as Hearing Exhibit I.

Lebanon is a parliamentary republic. The U.S. has traditionally had close ties with Lebanon, and it seeks to help preserve Lebanon's independence, national unity, and territorial integrity.

Lebanon has been in a state of war with Israel since 1973. Its foreign policy and internal policies have been heavily influenced by Syria after the entry of Syrian troops into Lebanon in March 1976. Even after the withdrawal of Syrian troops in April 2005, Syria continued to conduct intelligence activities in Lebanon and to exercise a strong influence on Lebanese politics.

Syria, designated by the U.S. as a state sponsor of terrorism, provides political and material support to Hizballah, the most prominent terrorist group in Lebanon. Hizballah has been designated by the U.S. as a foreign terrorist organization, closely connected to Iran and a strong ally of Syria in advancing its political objectives in Lebanon. Hizballah supports numerous violent anti-U.S. and anti-Israel groups. It initiated a military confrontation with Israel in July-August 2006, jeopardizing the long-term stability of Lebanon and complicating U.S.-Lebanese relations. Between 1996 and 2004, Hizballah received financial support from a global criminal enterprise operating in Lebanon, Canada, China, Brazil, Paraguay, and the U.S.

Lebanon suffers from continued political violence and terrorism, threatening the safety and security of its own citizens as well as U.S. citizens, especially in the popular districts of Beirut and other tourist areas. Lebanese security forces have been guilty of human rights abuses, and local militias and non-governmental forces have frequently violated citizens' privacy rights, used informer networks, and monitored communications to obtain information about their adversaries.

## 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 occupy a position . . . that will give that person 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 and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *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. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. 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).

## CONCLUSIONS

### Guideline C (Foreign Preference)

The concern under this guideline is 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.” AG ¶ 9. The SOR alleges Applicant exercised dual citizenship with Lebanon and the U.S. (SOR ¶ 1.a) by possessing an active Lebanese passport (SOR ¶ 1.b) and using his Lebanese passport to travel to and from Lebanon (SOR ¶ 1.c). It also alleges he owns interests in two apartments and a farm in Lebanon (SOR ¶ 1.d), maintains a bank account in Lebanon (SOR ¶ 1.e), and received money for educational expenses from a foundation in Lebanon (SOR ¶¶ 1.f and 3.a).

The exercise of dual citizenship alleged in SOR ¶ 1.a is the conduct alleged in SOR ¶¶ 1.b and 1.c. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant’s favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶ 1.a in Applicant’s favor.

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport” AG ¶ 10(a)(1). Applicant’s possession and use of his Lebanese passport after he became a U.S. citizen raises AG ¶ 10(a)(1).

A disqualifying condition also may arise from “accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.” AG ¶ 10(a)(3). Applicant’s acceptance of educational benefits based on his Lebanese citizenship raises the first prong of this disqualifying condition, but the benefits were conferred by a private foundation, not “a foreign country.” Thus, I conclude AG ¶ 10(a)(3) is not raised.

Ownership of property and having a bank account in a foreign country are not enumerated disqualifying conditions under this guideline, but they may raise a security concern under Guideline B, discussed below.

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶¶ 10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. 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).

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition is established.

Security concerns based on possession or use of a foreign passport may be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). Applicant admitted at the hearing that he knew his foreign passport raises security concerns, but he has done nothing to mitigate those concerns. He expressed his willingness to surrender his passport, but he has not done so. This mitigating condition is not established.

To the extent that Applicant's acceptance of educational benefits based on his Lebanese citizenship might raise a concern under this guideline, a mitigating condition would apply, because his "exercise of the rights, privileges, or obligations of foreign citizenship occurred before [he] became a U.S. citizen." AG ¶ 11(c). His indebtedness to the Lebanese foundation is also a relevant consideration under Guidelines B and F and the whole person analysis, discussed below.

### **Guideline B (Foreign Influence)**

The concern 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 ¶ 6. The SOR alleges Applicant's wife is a citizen of Lebanon (SOR ¶ 2.a); his brother, half sister, mother-in-law, father-in-law, and brother-in-law are citizens and residents of Lebanon (SOR ¶¶ 2.b-d); he owns real estate and a bank account in Lebanon (SOR ¶ 2.e); he received educational benefits from a private foundation in Lebanon (SOR ¶ 2.f), and he has traveled numerous times to Lebanon and Syria (SOR ¶ 2.g).

Four disqualifying conditions under this guideline are relevant to this case. First, 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). Second, a disqualifying condition may be raised by "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." AG ¶ 7(b). Third, a security concern may be raised if an applicant is "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion" AG ¶ 7(d). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Finally, a security concern also may be raised by "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." AG ¶ 7(e).

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific,

and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., 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.

Although Lebanon and the U.S. have strong ties, Lebanon is a turbulent nation plagued by violence, and it is heavily influenced by Syria, a state sponsor of terrorism. Thus, Applicant’s ties to his siblings and in-laws in Lebanon raise the “heightened risk” in AG ¶¶ 7(a) and (d). His financial and property interests in Lebanon raise the “heightened risk” in AG ¶ 7(e). Finally, his family ties to Lebanon raise the “potential conflict of interest” in AG ¶ 7(b). These potentially disqualifying conditions shift the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

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). Applicant’s siblings and in-laws are not connected to the government or any of the competing political groups in Lebanon. However, they are vulnerable to a heightened risk of exploitation, inducement, manipulation, pressure, or coercion because of the volatile political situation in Lebanon and the pervasive influence of Syria and terrorist groups supported by Syria. Accordingly, I conclude AG ¶ 8(a) is not established.

Security concerns under this guideline also can 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). “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002). Applicant is estranged from his sister because he disapproves of her husband. He and his wife have no contact with his father-in-law. However, Applicant’s sense of loyalty and obligation to his brother, half sister, mother-in-law, and brother-in-law who reside in Lebanon are more than “minimal.” He has lived in the U.S. since 1983, but he did not become a citizen until 2002. He has ties to both the U.S. and Lebanon. His frequent travel to Lebanon, alleged in SOR ¶ 2.g, illustrates the strength of his ties to Lebanon. I conclude he has not carried his burden of proving AG ¶ 8(b).

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). He has not overcome this presumption for his brother and half sister in Lebanon. He also has regular contact with his mother-in-law and brother-in-law. I conclude AG ¶ 8(c) is not established.

Finally, security concerns can be mitigated by showing that “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.” AG ¶ 8(f). The value of Applicant’s assets in Lebanon is much less than his assets in the U.S., and they produce no significant income for him. Nevertheless, they are worth more than his annual pay. I conclude AG ¶ 8(f) is not established.

The fact that Applicant’s indebtedness is to a private, non-governmental foundation is not dispositive, because the activities of non-governmental organizations can give rise to security concerns. However, those concerns can be mitigated by the evidence that he is under no legal obligation and no pressure to repay it. The debt is also relevant under Guideline F and the whole person analysis, discussed below.

### **Guideline F (Financial Considerations)**

The concern under this guideline is as follows: “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” AG ¶18. The SOR ¶ 3.a alleges Applicant is indebted to a private foundation in Lebanon for his educational expenses.

The evidence reflects that Applicant received loans for educational and living expenses totaling more than \$56,000 between January 1987 and January 1990. There is no evidence the loans are delinquent, because there is no due date for repayment. The foundation has made no effort to collect the debt. Applicant is not financially overextended, because, with an income of \$130,000 per year and assets worth about a million dollars, he has the ability to repay the loans. No disqualifying conditions under this guideline are raised.

## **Whole Person Analysis**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant'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. AG ¶¶ 2(a)(1)-(9). Some of these factors are discussed above, but some merit additional comment.

Applicant is a mature, well-educated, intelligent adult, devoted to his family. He is aware that his foreign passport and foreign assets raise security concerns, but he has offered only explanations and promises instead of taking positive steps to mitigate or eliminate those concerns. He cannot be faulted for his family ties to Lebanon, but the totality of his family ties and his financial interests in Lebanon make him vulnerable to pressure or coercion. His indebtedness to the Lebanese foundation arose before he became a U.S. citizen, and it does not make him vulnerable to pressure or coercion because there is no pressure to repay the debt.

After weighing the disqualifying and mitigating conditions under the applicable guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on his indebtedness to the Lebanese foundation, but he has not mitigated the security concerns based on foreign preference and foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

|  |                   |
|--|-------------------|
| Paragraph 1. Guideline C (Foreign Preference): | AGAINST APPLICANT |
| Subparagraph 1.a:                              | For Applicant     |
| Subparagraphs 1.b-1.c:                         | Against Applicant |
| Subparagraphs 1.d-1.f:                         | For Applicant     |
| Paragraph 2. Guideline B (Foreign Influence):  | AGAINST APPLICANT |
| Subparagraphs 2.a-e:                           | Against Applicant |
| Subparagraph 2.f:                              | For Applicant     |
| Subparagraph 2.g:                              | Against Applicant |
| Paragraph 3. Guideline F (Financial):          | FOR APPLICANT     |
| Subparagraph 3.a:                              | For Applicant     |

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge