



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-00196  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel

For Applicant: Alan Dickson, Attorney At Law  
Holland & Knight LLP

November 25, 2008

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Security Clearance Application (SF-86) dated February 4, 2006. On April 4, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on June 18, 2008, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 22, 2008. A notice of hearing was issued on September 15, 2008, scheduling the hearing for October 20, 2008. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F, and testified on her own behalf. The official transcript (Tr.) was received on October 30, 2008. Based upon a review of the

case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political conditions in Lebanon. Applicant had no objection. (Tr. p. 14). The request and the attached documents were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 42 years old and has an Associates Degree in Marketing, and a certificate from an executive business course she took in Business Management Development. She is Chief Operating Officer and owner of a defense contracting company. She is seeking to obtain a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence) The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information. The Applicant admits all of the allegations set forth under this guideline, except 1(c) in the SOR.

The Applicant was born in Beirut, Lebanon in 1966, to an American Catholic mother and a Lebanese father. For some unknown reason, her birth was never registered as Lebanese. She was registered at birth at the American Embassy, and was issued a United States passport. She spent her first eight or nine years in Lebanon and learned to speak Arabic. She attended a French speaking Catholic grade school, so she also learned to speak French. In 1975, when the war started in Lebanon, the Applicant, who was nine years old at the time, left Lebanon with her mother and siblings, and moved to London, England. Her mother primarily raised her. Her parents spoke English to her and so she learned to speak English. When she was sixteen, her parents separated and later divorced. At the age of twenty, the Applicant moved from London to the United States to complete college.

In 2001, the Applicant and her brother started Company A in the United States. The original purpose of the company was to engage in international trading with the Middle East. However, after Applicant's father wrote a white paper that won a contract

with the Defense Department, in May 2004, Applicant's father began working as a consultant for his daughter's (the Applicant's) company. Applicant's father, who is a dual citizen of Lebanon and the United States, and was residing in Lebanon at the time, had no company to implement the defense contract in the United States, and so he utilized the Applicant's company. (See Applicant's Exhibit B). Applicant's father was a consultant for the Applicant's company from May 2004 through February 2006, and September 2006 through May 2007. Applicant indicates that her father moved to Iraq for two years to help the United States military. In May 2007, Applicant fired her father as a consultant for her company, for failing to comply with her companies rules and regulations. She gave him several warnings, but they were not effective. She explained that she and her father had big disagreements on how to conduct company business matters. (Tr. pp 66-67).

In 2005, the Applicant's company was sponsored by Company B, and awarded the Government contract discussed above. Applicant had to obtain a security clearance to satisfy the contract requirements. The Applicant obtained her secret level security clearance, and in 2006, she became the Facility Security Officer (FSO) of her company. She took an on line training course to be the FSO. As the company grew, she assigned that responsibility to someone else. She is currently applying for a Top Secret level clearance because they have recently won a contract at that level. In addition to her security clearance, her company also needs a facility security clearance. This required that she restructure the company and hire a new President who has Top Secret SCI Access and top level Ex-Military people to head various departments to comply with United States Government requirements.

Applicant offers that all of the subcontractors used by the Applicant in furtherance of their government contract had to be approved by the United States military. Concerning this topic, her attorney asked, "And the foreign subcontractors that [Applicant's company] has worked with, I think what you're telling me is that those have all been identified routinely to the prime contractor who, in turn, reveals them to the U.S. Is that your - -". Applicant responded, "Correct. Those subcontractors are mostly when we - - my brother and I - - the Government asks us can you put together a team of experts on the Middle East to do a public diplomacy, and we knew the owners of [name redacted] and [name redacted] and some other - - another company [name redacted] that was actually owned by a friend of my brother's from Boston College. He's an American and he started this Iraqi company to help radios put - - basically create a radio station - - to help get news to military there and some other things." (Tr. pp. 78-79).

Applicant further indicates that the United States is currently trying to improve its economic developments in Iraq and are requiring some of the United States contractors to own a company in Iraq and hire Iraqi local nationals to assist on the contract. Her company recently started the process of having a business license in Iraq in order to meet the requirements of the contract her company is now bidding for. (Tr. p. 72).

Applicant discusses allegations 1(b) and 1(c), regarding her father's involvement in Lebanese internal affairs. (See Government Exhibit 6, and Tr. p. 69). She loves her father, but does not feel close to him at the present time. She last spoke to him in the summer of 2007, when she saw him at her brother's wedding. (Tr. p. 66).

The Applicant traveled to Lebanon in 2000, 2001, 2003, and 2005 for pleasure. In 2005, she also conducted some business matters. She has family in Lebanon that include her father's cousins, but she is not close to them. Her two sisters live in the United States. She states that she has a tender heart for a place that she remembers which is not the place that Lebanon is today. She has no financial assets in Lebanon and does not stand to inherit anything there based upon her cultural traditions.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he intentionally falsified material aspects of her personal background during the employment process.

The Applicant denies the allegations set forth under this guideline.

The Applicant completed a Certificate Pertaining to Foreign Interests (Standard Form 328) dated November 4, 2005. Question 5 asked the Applicant, "Does your organization have any contracts, agreements, understanding, or arrangements with a foreign person(s)?" The Applicant answered, "NO". (See Government Exhibit 2). This was a false response. The Applicant failed to disclose her contracts with her father, a citizen and resident of Lebanon, and companies in which her father had an interest.

The Applicant offers a number of explanations as to why she did not answer the question accurately. She explained that she did not consider her father a foreign person because he is also a United States citizen. (Tr. p. 85). She also thought the question was asking her if she had any foreign interest in something. (Tr. p. 75). She contends that she had no reason to hide any of the subcontractors that her company works with because she previously disclosed this information on other Government documents. She saw no printed instructions on how to fill out the form. (Tr. p. 123). She also believes that she originally filled out the form in May 2005, and at that time she had not yet hired the foreign subcontractors. (Tr. pp. 81-82). She remembers being overwhelmed when she filled out the application. (Tr. p. 124).

The Applicant completed a Security Clearance Questionnaire dated February 4, 2006. Question 12 asked the Applicant, "Do you have any foreign property, business connections, or financial interest?" The Applicant answered, "NO". (See Government Exhibit 3). This was a false answer. The Applicant failed to disclose her business connections that include her father, a citizen and resident of Lebanon, companies in which her father had an interest, and foreign subcontractors.

She explained that she took the question to be asking whether she owns foreign property. (Tr. p. 140). She did not consider any of the foreign subcontractors to fit into that category. She further contends that she did not have foreign subcontracting companies affiliated with her company until November 2005, and that she originally signed the form in March 2005. Her signature reflects the date of February 4, 2006. She also adds that she had no instructions on how to properly answer the questions.

Lebanon is a parliamentary republic and has been in a state of war with Israel since 1973. Lebanon's foreign policy has been heavily influenced by neighboring Syria, which has also long influenced Lebanon's internal policies as well. Syria, which has been designated by the Secretary of State as a State Sponsor of Terrorism provides

“political and material support to Hiszballah.” Hiszballah remains the most prominent terrorist group in Lebanon and has a strong influence among Lebanon’s Shia community which comprises about one-third of Lebanon’s population. According to the most recent U.S. Department of State report on Human Rights Practices, Lebanese security forces arbitrarily arrested and detained individual, and there were instances of arbitrary or unlawful deprivation of life, torture and other abuse. Militias and non-Lebanese forces operating outside of the area of Lebanon’s central government authority frequently violated citizens’ privacy rights and various factions used informer networks and monitoring of telephones to obtain information regarding their perceived adversaries. The U.S. Department of State continues to strongly urge that Americans defer travel to Lebanon and that the U.S. remains concerned about the threat of terrorism against Western and Lebanese government interests in Lebanon.

A declaration from a retired Army major who was employed as Vice President of the Applicant’s company from April 2006 to May 2008, and is acquainted with the Applicant indicates that in his opinion, her relationship with her father would not call into question her identification or loyalty to the United States. (Applicant’s Exhibit A).

## POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Foreign Influence

6. *The Concern.* 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.

#### Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

7. (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.

Conditions that could mitigate security concerns:

8. (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.;

8. (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.;

8. (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;

8. (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. OF special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

16. (a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.<sup>7</sup>

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## **CONCLUSIONS**

In the defense industry, a security clearance is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for such access may be involved in instances of financial irresponsibility and dishonesty which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears

the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has foreign contacts (Guideline B) and that she has been untruthful on her security clearance application and certificate of foreign interests. (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The Applicant has significant foreign contacts in Lebanon, that include her father, her father's cousins and other foreign business entities. Disqualifying Conditions 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* and 7.(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* apply.

However, there are a number of mitigating conditions that also apply. Mitigating Conditions 8.(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.* and 8.(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.;* 8.(c) *contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation* and 8.(d) *the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority* also apply. Applicant is an American citizen with loyalties to the United States. Her contact with her father is now occasional and minimal, and her foreign contacts have been approved by the Department of Defense for furtherance of Government business. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

On the other hand, with respect to Guideline E, the Applicant's failure to answer the questions accurately on her Certificate Pertaining to Foreign Interest and on her Security Clearance Application is inexcusable. Given the nature of her business, none of her explanations for failing to answer the questions accurately are reasonable or even comprehensible. Applicant is the owner of a company that subcontracts with foreign companies and individuals, and is responsible for ensuring that the interests of national security are protected. She had an independent responsibility to report those foreign



subcontractors or individuals to the Government on the respective forms. If the Applicant is unable to answer these questions accurately, she certainly cannot be trusted with the national secrets. The questions on the forms are neither difficult, confusing or misleading. Her signature on the respective forms certifies its completeness and accuracy.

None of the Applicant's arguments have merit. She did have foreign subcontractors working with her company at the time she completed the forms. (See Government Exhibit 5 and Tr. pp. 77-79). She knew or should have known to answer the questions correctly and should have revealed all of her foreign contacts, in detail, and with no exceptions, on her on her Certificate Pertaining to her Financial Interest and on her Security Clearance Application. For whatever reason, she actively sought to conceal this information. It is the Applicant's burden to justify, explain or mitigate her answers, and she has not done so. Consequently, the evidence shows that the Applicant cannot be trusted with the national secrets. Disqualifying Condition 16(a) *the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigating conditions are applicable. I find that the Applicant deliberately sought to conceal material information from the Government and that she is not qualified for access to classified information.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is 42 years old, mature, educated, intelligent, successful, and is the owner of a defense contracting company. However, under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has not demonstrated that she is trustworthy, and does meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct). Guideline B (Foreign Influence) is found for the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 2 of the Government's Statement of Reasons. Paragraph 1 is found for the Applicant.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

## **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge