



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



In the matter of:)
)
) ISCR Case No. 19-01884
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2021

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated foreign influence or personal conduct security concerns in this case. Eligibility for access to classified information is denied.

Statement of the Case

On April 30, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence), Guideline E (personal conduct) and Guideline F (financial considerations.) The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG's) implemented by the DOD on June 8, 2017.

Applicant timely responded to the FORM, and elected to have his case decided on the basis of the written record, in lieu of a hearing. Applicant received the file of relevant material (FORM) Items 1-5 on March 13, 2021, and objected to some items. I was assigned the case on May 17, 2021. Applicant supplemented the record with a

packet of documents providing corrections and information on his financial status. (Item A). He admitted the SOR allegations under both guidelines with explanations. (Item 2).

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Lebanon. The request and the attached source documents were not admitted into evidence but were included in the record as Exhibit (Item 6) All of the documents referenced in the Request for Administrative Notice and the facts asserted therein, are from open sources and are dated. Lebanon has been plagued by corruption and human rights abuses. The country is often lawless; and it has been described as a failed-nation-state. The Department of State warns U.S. citizens to reconsider or avoid travel to Lebanon in certain areas due to terrorism and outbreaks of violence, especially near Lebanon's borders with Syria and Israel.

Applicant did not object, and I have taken administrative notice of the facts contained in the Item 6 source documents, and incorporated them by reference. The facts are summarized in the written request and will not be repeated in this decision.

Findings of Fact¹

Applicant is a 47-year-old male of Lebanese descent and citizenship. He entered the United States on a business visa in February 1999. Applicant is divorced with no children. In 2002, he left the United States to work as a linguist in support of U.S. forces in Iraq. He returned to the United States in 2005, and left again in March 2005 until September 2010 to again work as a linguist in Iraq for the U.S. military. (Items 4, 5) In 2010, Applicant left Iraq without authorization to go to Lebanon to visit his mother who was ill. He was fired from his position and returned to the United States. (Item 5)

Applicant surrendered his Lebanese passport in 2006. (Item 5) He became a naturalized U.S. citizen in 2008. (Item 3) From 2010 until 2015, he resided in the United States, (Item 5) except for an unauthorized visit to see his mother in 2010. In 2016, he obtained a new Lebanese passport to visit his brother in Saudi Arabia. On his security clearance application of January 2018, he reported he lived in Lebanon from July 2016 until the present (2018). (Item 3). He attended multiple universities from 2009 until 2020, when he obtained his undergraduate degree. He received his undergraduate degree in 2000 from a University in Lebanon. He has not held a security clearance. Applicant submitted a Questionnaire for National Security Positions (SCA) on January 16, 2018. (Item 3) In 2003, he was granted a confidential clearance. (Item 3)

¹ Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions (SCA) dated January 2018 and the summary of his clearance interview by a clearance investigator in 2018.

Applicant is being sponsored for a position as a linguist for deployment in Iraq. (Item 3) His skills in Arabic and English allowed him to interview people from various countries.

The SOR alleged under Guideline B that Applicant was a dual citizen of the Lebanese Republic and the United States since 2015 (1.a); that he maintained a bank account in Lebanon with an approximate amount of \$4,000 (1.b); that his brother is a citizen of Lebanon and resident of Saudi Arabia (1.c); that Applicant's cousin is a citizen and resident of Lebanon, and is a police officer with the Lebanese Ministry of Justice (1.d); and that Applicant has close and continuing contact with at least three aunts and one cousin who are citizens and residents of Lebanon.

The SOR also alleged under Guideline E that in May 2015, he was dismissed from a university for academic dishonesty by cheating on two examinations from about February 2015 to about April 2015. (2.a)

Applicant admitted the SOR allegations under Guideline B, SOR ¶¶ 1.a through 1.e, in his Answer to the SOR.

After Applicant's submission of financial information in response to the FORM, the Government withdrew the Guideline F allegation in paragraph three of the Statement of Reasons, in its entirety. (FORM)

Applicant admits that he is a dual citizen of Lebanon and the United States. (1.a) He used the Lebanese passport when he returned to Lebanon for university. He is willing to renounce it. (Item 4)

Applicant no longer has a bank account in Lebanon (1.b) According to him it has his brother's name on it. He provided no support for his answer. It is in his brother's name according to response. He admitted this allegation in his answer. The value was listed at \$4,000. In his subject interview he admitted he opened a bank account in Lebanon in 2018. (Item 4)

Applicant has one brother who is a citizen of Lebanon and a resident of Saudi Arabia. (1.c) He has never applied for U.S. citizenship. His brother helped Applicant financially when he was going to university. Applicant speaks electronically to his brother on a weekly basis. (Item 4)

Applicant has a cousin who is a police officer in Lebanon for the Ministry of Justice. (1.d) He reports casual contact with him.

Applicant maintains close and continuing contact with at least three aunts and one cousin who are citizens and residents of Lebanon. (1.e) When Applicant returned to Lebanon in 2015, he maintained weekly contact with his aunt in person. (Item 3) His mother came to visit him when he was in Lebanon. He stated that he returned to Lebanon in 2015 to continue university study because it was affordable. (Item A, Item 3, Item 5) He also had a neighbor and cousin in Lebanon during this time. (Item 3)

As to SOR allegation 2.a and his dismissal for cheating on examinations, Applicant at first gave excuses to the University, but then consulted a lawyer and admitted that he cheated. (Item 4) He appealed the decision, but he did not win. He regrets his actions and states that it has haunted him for too long. (Item 2) He understands that these actions will have an impact on the rest of his life. (Item 2). However, in his subject interview, he told the investigator about the incident, but stated that nothing came of it. (Item 4) He also admitted that when he was first confronted by an investigator, he denied the cheating incident. He also initially denied cheating to the University.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 national security eligibility will be resolved in favor of the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way that is inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (a) contact, regardless of method, 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 classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology;
- (c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business that could subject

the individual to heightened risk of foreign influence or exploitation or personal conflict of interest.

The Government has presented a *prima facie* case for foreign influence. Applicant has been in Lebanon from 2015 to 2018. He has a connection to Lebanon and his family who are citizens and residents of Lebanon. Close and continuing ties with family members who are citizens of a foreign country with demonstrated terrorist groups toward the United States create a heightened risk. Applicant's ties create a potential conflict of interest and make him vulnerable to foreign exploitation, inducement, manipulation, pressure or coercion. Applicant was terminated from his position as a linguist working for the U.S. mission in Iraq, after he left without authorization to visit his ill mother in Lebanon. This action reinforced the Government's concern. Applicant admits his close contact with his family in Lebanon with whom he is bound by affection. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the 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 agency head or designee;

(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.

I considered the totality of Applicant's foreign contacts and interests. 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.²

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Lebanon is such a country as outlined in the Administrative Notice for this case.

Applicant came to the United States in 1999. He became a U.S. citizen in 2008. He surrendered his passport in 2006, but in 2016, he obtained a new one. He served as a contractor linguist in Iraq with the military forces from 2007 until 2010, but was terminated from that position for leaving to go to Lebanon without authorization to see his ill mother. There is no information about his assets in the United States. He returned to Lebanon in 2015 to 2018 to attend University after he was dismissed from an American University for cheating. Some of his family members have affiliation with the Lebanese government. His family knows about his work and seeking a clearance..I find that all foreign influence concerns are not mitigated. Applicant has not carried his burden of proof in this case.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to

² ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

(c) credible adverse information in several adjudicative issue Areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment..... or unwillingness to comply with rules and regulations.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the mitigating conditions none of them apply. Applicant cheated on a University exam and initially denied the cheating during his background investigation interview. This occurred in 2015. In his subject interview he lied to the investigator and stated that nothing came of the situation. He has shown untrustworthy behavior and a pattern of dishonesty. This is not minor, nor did he make good-faith efforts to correct an omission before being confronted with the facts. He has not received counseling or really acknowledged his behavior.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated foreign influence and personal conduct security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a – e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraph 1.a:	Against Applicant
Paragraph 3, Guideline F:	WITHDRAWN

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge