



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



In the matter of: )  
)  
) ISCR Case No. 19-01453  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Price, Esq., Department Counsel  
For Applicant: Asya Hogue, Esq.

07/15/2021

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 12, 2019, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, 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) effective on June 8, 2017.

Applicant answered the SOR on January 15, 2020, and requested a hearing before an administrative judge. The case was assigned to me on February 24, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5,

2020, scheduling the hearing for April 10, 2020. The hearing was canceled due to the COVID-19 pandemic. On May 14, 2021, a notice of hearing was issued scheduling the hearing via the Defense Collaboration Services (DCS) system. I convened the hearing as scheduled on June 23, 2021. The Government offered exhibits (GE) 1 through 7. There were no objections and the exhibits were admitted into evidence. As part of his answer to the SOR, Applicant included Applicant Exhibits (AE) A through H. At the hearing, AE I through M were offered into evidence. (Due to an administrative error, a second AE H was offered. I remarked this as AE N, next in order.) All exhibits were admitted without objection. The record was held open until June 30, 2021 to permit Applicant to submit additional documents, which he did. They were marked AE O and P and were admitted without objection. (Hearing Exhibit (HE) I is Department Counsel's memo) DOHA received the hearing transcript on July 2, 2021.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about the countries of Jordan and Lebanon. (HE II and III). Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in both countries.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He was born in Kuwait. He immigrated to the United States in 2000 and became a naturalized U.S. citizen in 2009. He has a bachelor's degree from an American university. (Tr. 16-17, 44; GE 1)

Applicant married in 2003 and divorced in 2009. He remarried in Jordan in 2013 to a Jordanian citizen. His wife moved to the United States in 2015 and is a permanent resident. They have no children. Applicant paid a substantial amount for the wedding, but testified he could not recall how much exactly he spent. His wife also contributed "a little bit too." (Tr. 45). He is his wife's sole provider. (Tr. 17-18, 44-45, 62; GE 1; AE B, C, D)

In late 2018, Applicant and his wife returned to Kuwait so he could try and get a job at the U.S. embassy. From there she traveled to Jordan in late 2018 and has remained there because her father was sick. Applicant did not get a job in Kuwait, so in April 2019, he returned to the U.S. from Kuwait. His wife stayed in Jordan while he continued to look for work in the United States. He explained that he wanted to get a job and get the household settled before she returned to the U.S. and it was easier for him to do it alone. His wife has been caring for her father since then and plans to return to the United States in the next few weeks. He provided a copy of her airline ticket. She has a special re-entry visa that permitted her to remain outside of the United States for longer than six-months.

She was a pharmacist assistant and hopes to continue her studies in the U.S. and to seek citizenship when she is eligible. She has no assets in Jordan. Her father is a retired teacher and her mother is a homemaker. They have no ties to the Jordanian government. (Tr. 25-35, 59, 62-66, 72; AE J, O, P)

Applicant has one sibling, a sister, who was born in Kuwait and is a citizen of Germany, living in Lebanon. She teaches at an American school there. She is married to a German national and has two children. He is a lawyer who splits his time between Germany and Lebanon. Applicant speaks to his sister about every six months, and they last visited together in the United States in 2014. She traveled to the United States in 2016 and was a visiting professor at a university. Applicant and his sister did not visit each other at that time. His father and mother are permanent residents of the United States. (Tr. 35-41, 66-68)

Applicant testified that he came to the United States when he was 18 years old. He has been a refugee all of his life and the U.S. is the only place that gave him an opportunity and a sense of belonging. He was in Kuwait during the Gulf War and afterwards he and his family traveled to find a place to settle. He considers the United States his home. (Tr. 41-42)

Applicant disclosed in his September 2017 security clearance application (SCA) his prior work history. From September 2007 to March 2011, he was an office administrator. From March 2011 to August 2017, he was a sales representative. He was primarily unemployed from October 2017 to April 2019. In about November 2017, he began working for a federal contractor, but this was not a full-time job and he only worked sporadically when he was called in. The last time he was called in to work was from April 2018 to September 2018. He was able to collect unemployment benefit for about four weeks, but it was insufficient to cover all of his expenses. In April 2019, he worked for a wholesale food company until July 2020 when he lost his job due to the pandemic. In November 2020, he began work as a district manager for a food distribution company. (Tr. 18, 21-25, 45-50; GE 1, AE E)

Applicant testified that in 2014 his father needed emergency surgery and was later diagnosed with cancer. Applicant traveled to Lebanon to be with his father where the surgery was to take place. His father did not have the financial resources to pay for his medical needs. Applicant made the choice to help his father financially and used credit cards to pay for the medical expenses. Applicant testified that he made some payments towards the credit card delinquencies in about 2017, but due to his underemployment he has not been able to repay his debts. Applicant testified that he has not paid the credit card debts alleged in the SOR because he is recovering financially and is helping support his family and wife. (Tr. 19-21; AE K)

Applicant testified that he intends to repay his delinquent debts. After Applicant completed his SCA in September 2017, he became aware that his finances were a security concern. He provided a document to show he participated in financial counseling in January 2020, and he discussed his personal financial situation with the counselor in

detail. He supplied the counselor with information needed to provide him with options and they discussed workable solutions that would help improve his finances. (AE A) He never executed the proposed plan. He did not provide any supporting documents to show he has made any payments toward resolving his debts. (Tr. 52-53)

The debt in SOR ¶ 1.a (\$8,146) is a credit card debt and his March 2019 credit report shows there has been no activity on the account since October 2014. Applicant could not recall if he contacted the creditor. He testified that he has not made any effort to negotiate a settlement or pay this debt. (Tr. 53-54; GE 3) The debts in SOR ¶¶ 1.b through 1.j appear on his May 2021 credit report. Applicant has four delinquent accounts with the same collection company. The debts date back to 2014 and it appears a minimal payment was made on each account in 2018 (SOR ¶ 1.b-balance \$4,575-payment-\$55; ¶ 1.d-balance \$3,424-payment-\$41; ¶ 1.g-balance \$1,676-payment-\$20; and ¶ 1.h-balance \$1,268-payment-\$15). No other payments were made on these accounts or on any of the other SOR delinquent debts. He has not contacted any of these creditors to negotiate settlements or resolve the debts. (Tr. 54-58; GE 5)

Applicant's current annual salary is approximately \$56,000. He has no savings and is living paycheck to paycheck. He has no other assets. The debts alleged in the SOR are corroborated by Applicant's admissions and credit reports from November 2017, September 2018, March 2019, February 2020, and May 2021. (Tr. 58-59, 69; GE 1, 2, 3, 4, 5, 6, 7)

Applicant provided character letters. His work performance is described as exemplary while performing as a role player. He is also described as dedicated, intelligent, self-disciplined, open-minded, respectful and respected, productive, and an effective communicator and listener. (AE L, M)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline 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 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, considerations such as whether it is known to target U.S. 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; and

(e) shared 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.

There is a significant threat of terrorism and ongoing human rights problems in Jordan and Lebanon. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is potentially applicable:

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation.

I considered the totality of Applicant's ties to Jordan through his wife and to Lebanon through his sister. 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.

Applicant's wife is a permanent resident of the United States. She has been living in Jordan attending to her sick father and will be returning to the United States shortly.

Her parents are retired. There is no evidence that she or they have any ties to the Jordanian government. Applicant's sister is a German citizen living in Lebanon where she is a teacher at an American school. There is no evidence she has any ties to the Lebanon government. Applicant maintains some ties to his sister. AG ¶ 8(c) does not apply.

Applicant's ties to the United States outweigh his ties to Jordan and Lebanon. He has been in the United States for 19 years and earned his college degree. His wife will be returning to the United States and is a permanent resident who will seek citizenship when eligible. His parents are also permanent residents. His background is compelling as he was a refugee and now is a loyal citizen of the United States. I find that evidence supports that if presented with a conflict of interest that Applicant's loyalties to his adopted country are deep and longstanding and that he can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) applies.

### **Guideline F: Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 10 debts totaling approximately \$30,239 that have been delinquent since approximately 2014 and remain unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to helping to pay for his father's medical expenses that were incurred in 2014. Helping his father was an honorable act and his father's medical issues were beyond his control. Applicant has also been underemployed and unemployed, which was also beyond his control. For the application of AG ¶ 20(b), Applicant must show he has acted responsibly under the circumstances. Applicant made a couple small payments towards a few debts in 2018, but has not taken any other action regarding resolving these debts that are now almost seven years old. His minimal payments three years ago do not constitute a good-faith effort to repay his creditors. Although he says he intends to pay them, he has not provided a plan for how he intends to do so. He participated in financial counseling, but there is no indication that his financial problems are being resolved or are under control. His debts are recent, ongoing, and unresolved. There is insufficient evidence to fully apply any of the above mitigating conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant helped his father with his medical bills in 2014. He has not paid the credit cards that he used to pay these expenses. At this juncture, he has an unreliable financial track record. He has not met his burden of persuasion to mitigate the Guideline F, financial considerations security concerns. He has provided sufficient evidence to mitigate the security concerns under Guideline B, foreign influence. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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 F:	AGAINST APPLICANT
Subparagraphs 1.a-j:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge