



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



In the matter of:)
)
-----) ISCR Case No. 23-01249
)
)
Applicant for Security Clearance)

Appearances

For Government:
William Miller, Esq., Department Counsel

For Applicant:
Melissa L. Watkins, Esq.
Berry & Berry, PLLC

05/08/2024

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

On June 30, 2023, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence). The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance.

Applicant answered the SOR on August 25, 2023, attached eleven enclosures (Enclosure), and requested a hearing before an administrative judge. (Answer.)

Department Counsel was prepared to proceed on October 6, 2023. The case was assigned to me on October 23, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 26, 2023, scheduling the hearing for December 7, 2023. The hearing was convened as scheduled. The Government offered Government Exhibits 1 and 2, which were admitted without objection. The Government also submitted Government Exhibit 3 for Administrative Notice. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant Exhibits A and B, which were also admitted without objection. Applicant Enclosures 1 through 11 were also entered into evidence without objection. Applicant requested the record remain open for the receipt of additional documentation. Applicant Exhibits C through E were submitted in a timely fashion and admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 15, 2023. The record closed on December 29, 2023.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Republic of Lebanon (Lebanon). Department Counsel provided a six-page summary of the facts dated October 5, 2023, supported by seven Government documents pertaining to Lebanon, identified as Government Exhibit 3. At the hearing, Department Counsel requested permission to submit an updated administrative notice request, dated October 23, 2023. Applicant's counsel had no objection to my receiving the updated request, identified as Government Exhibit 4. It has an eight-page summary of facts, supported by 15 Government documents pertaining to Lebanon. (Items 1 through 15.) The documents provide elaboration and context for the summaries. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. 11-13, 93-95.)

Findings of Fact

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

Applicant is 28 years old and single. He has a master's degree in mechanical engineering. He is applying for a security clearance in connection with his employment with a Defense contractor as a Flight Controls Engineer. He started working for his current employer in July 2022. This is his first application for national security eligibility. (Government Exhibit 1 at Sections 12, 13A, and 17; Applicant Enclosure 7; Tr. 16-17.)

Paragraph 1 – Guideline B (Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for national security eligibility because he has foreign contacts that may 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.

Applicant was born in the United States in 1995. His parents are naturalized American citizens, originally from Lebanon. He has one sibling, who is also a native-born American citizen. (Government Exhibit 1 at Section 18; Tr. 33-34.)

1.a. The Government's first stated concern in the SOR is that "[Applicant's] mother, a dual citizen of Lebanon and the United States, is the leader of [a local] chapter of the Lebanese Forces North America [LFNA], an American-based nonprofit organization that promotes the interests of the Lebanese Forces political party in the United States."

As stated in the SOR, LFNA is an IRS ¶501(c)(3) non-profit charitable organization. Applicant's mother describes the conduct of her chapter of about 40 active members as follows in Applicant Enclosure 10:

The [local] chapter we help people from Lebanon who recently immigrated [from] Lebanon to [her city of residence] establish themselves in this country legally and comfortably (establish a home, school for their kids, find a job, etc.). Day-to-day, the activities are mainly social activities, such as Christmas parties, restaurant gatherings, etc. My son gave a good analogy of the "Young Democrats/Republicans" college groups where like minded individuals gather in a social setting. The group is not very involved in the political process in Lebanon and have no impact in Lebanon. The extent we are involved with Lebanese politics is only keeping up with the news. (See Tr. 56, 65-72, 77-78, 80-84.)

The Internal Revenue Service describes the allowed "exempt purposes" of a ¶501(c)(3) organization as follows:

The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term **charitable** is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency. (Internal Revenue Service, *Exempt Purposes - Internal Revenue Code Section 501(c)(3)*, <https://www.irs.gov/charities-non-profits/>)

charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3 (last reviewed or updated December 4, 2023).

Applicant has no involvement with the LFNA or Lebanese politics. He testified, "I want no involvement. I'm going to be quite honest. I don't even like most Lebanese political parties. I just want to stay, you know, involved in the United States." (Tr. 35-38.)

Applicant had previously described in greater detail in Applicant Enclosure 5 his lack of involvement:

First and foremost, the foreign political activities brought up about my mother are just that, my mother's. I have no fondness or affection towards the Lebanese Forces, any other Lebanese political party or group, or the Lebanese government in general, and I have no preference for Lebanon over the United States. In fact, I have made it clear to my mother that I have not, do not, and will never be involved in the organization, and that any interaction would purely be for either supporting her, or in a humanitarian context. . . . Even at home, I refuse to speak of Lebanese politics with my mother.

He has been to two social events while his mother has been president. His mother stated, "Outside of that, he refuse [sic] to be involved at all with the Lebanese Forces." (Applicant Enclosures 5 and 11; Tr. 70-71, 81.)

Applicant's mother also stated the following, "I'm so proud to have an American Passport. I am so proud to have my kids, they have an American Passport, and I am so proud I'm American." (Tr. 38-39, 72.)

Applicant is very aware of his responsibilities if he obtains a security clearance. He stated that he has not been approached by anyone about seeking classified information, nor has he or anyone he knows been threatened for such information. (Tr. 33, 59.)

Applicant expanded on his personal conduct regarding security responsibilities in Applicant Enclosure 5:

I have established a precedent that I will not speak about work at home or with my relatives. Even when working at [a prior employer], when asked about my work, I was vague and avoided answering directly any questions. I made it a point to speak about work only in a vague and inconspicuous way, even though no information was classified or restricted beyond ITAR requirements. In my mind, I did this because I understand information may inadvertently slip out or propagate without the pre-context of ill-willed intention.

1.b. The Government's concern in this subparagraph was the presence of Applicant's grandmother in Lebanon. She passed away in October 2023, vitiating any security concerns. This allegation is found for Applicant. (Tr. 25, 55.)

1.c and 1.d. Applicant's uncle is a citizen of, and lives in, Lebanon. According to Applicant, the area where his uncle lives is "fairly safe and fairly stable." This location is not near the Syrian or Israeli borders. The uncle had a stroke several years ago and became disabled. For several years Applicant has been providing money towards his uncle's living expenses in Lebanon. He currently sends \$750 a month to his uncle through his father. This information was disclosed on his e-QIP. The total he has sent over the past several years is approximately \$25,000. This expense does not have an appreciable impact on Applicant's finances. He provided records showing that he is financially secure. He talks to this uncle every month or so. Applicant last visited Lebanon in 2015. (Government Exhibit 1 at Section 20A; Applicant Enclosures 5, 6, and 11; Applicant Exhibits C, D, and E; Tr. 27-32, 44.)

Lebanon

I take administrative notice of the following facts concerning Lebanon:

Lebanon is a parliamentary republic with close ties to the United States. Lebanon has significant internal anti-western terrorism threats that operate contrary to U.S. interests. The U.S. Department of State has a level 4 travel advisory in effect for Lebanon since October 17, 2023, which advises against all travel to Lebanon. It specifically states to avoid travel to the borders of Lebanon with Syria and Israel. There is potential for death or injury in Lebanon because of terrorist attacks. (Government Exhibits 3 and 4.)

According to the State Department "Country Reports on Terrorism 2021," the latest report in the record (Government Exhibit 4 at Item 5):

In 2021, the United States provided security assistance and training to the Lebanese Armed Forces (LAF) and worked with law enforcement organizations, such as the Internal Security Forces (ISF), to enhance their counterterrorism capabilities and investigate and prosecute local terrorism cases.

Lebanon does not have a comprehensive terrorism law, but several articles of Lebanon's criminal code are effectively used to prosecute acts of terrorism. . . . The Department of State funded programs to train judges and prosecutors on the skills needed to adjudicate criminal cases, including terrorism-related cases.

LAF and ISF units, including units receiving U.S. capacity building assistance, undertook enforcement actions against suspected terrorists in 2021. In January, the LAF arrested 18 Lebanese and Syrian nationals suspected of being ISIS operatives in the northeaster Aarsal region.

Mitigation

Applicant's supervisor since July 2022 testified and provided a written statement. The witness is knowledgeable about the allegations in the SOR. He finds that Applicant's performance "is at a level of what you would expect from a new hire." The witness gave Applicant a "SPOT" award for contributions to the employer. He has had no issues with Applicant and recommends him for a position of trust. (Applicant Enclosure 8; Applicant Exhibits A and B; Tr. 85-93.)

Applicant Enclosure 9 consists of six additional letters of recommendation for Applicant. All of the letter writers have knowledge of the allegations in the SOR. (Tr. 62-63.)

The first letter is from an individual who is currently an outside director of the Defense Counterintelligence and Security Agency (DCSA). He has had positions of responsibility with the U.S. Government from 1971 to 2016. He has known Applicant for over ten years. He states, "[Applicant] is known for avoiding all contact and relationship with the tangled web of issues relating to his parents, their activities and their homeland." He concludes, "I am convinced beyond a doubt that [Applicant] takes his national security responsibility most seriously and would never disgrace his country either by action or association."

Letters two through five of Applicant Enclosure 9 are from coworkers and supervisors at Applicant's previous place of employment. He worked there from October 2020 to June 2022. He is described as someone who has shown "the utmost professionalism." Another writer states, "He takes his national security obligations very seriously and deeply understands the standards of conduct required to work in support of the Government."

The sixth letter is from Applicant's pastor. He stated, "[Applicant] is a person of great moral character: integrity, honesty, and diligence."

Policies

When evaluating an applicant's suitability for a national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks national security eligibility 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 protect or 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 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

Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline 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. Three 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

(c) 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 a heightened risk of foreign influence or exploitation or personal conflicts of interest.

Applicant's mother is a dual citizen of Lebanon and the United States. She is the current president of her local branch of LFNA. His disabled uncle lives in Lebanon and Applicant helps provide him financial assistance. The evidence is sufficient to raise these disqualifying conditions.

Lebanon has significant internal anti-western terrorism threats that operate contrary to U.S. interests. Accordingly, Applicant's substantial and close family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mutually beneficial relations between the United States and Lebanese military and security forces, as set forth in administrative notice documents, is also an aspect of this case that must be considered.

The DOHA Appeal Board has stated:

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the

compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the 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 United States, 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; 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.

Turning first to the concerns about Applicant's mother and her activities with LFNA. Applicant has stated repeatedly and forcefully that he is an American, that he has nothing to do with LFNA, and has no interest in Lebanese politics. He has done all he can to resolve this issue, which is most unlikely to generate potential for conflicts of interest or foreign exploitation in these circumstances.

Applicant has minimal contact with his uncle in Lebanon. They speak on a monthly basis. Applicant helps support this relative with basic living expenses due to his disability, but the amount is not excessive and does not have a detrimental affect on his finances.

Several facts support the application of AG ¶¶ 8(a), (b), (c), and (f). First, Applicant has little personal contact with his uncle, speaking to him only occasionally and last seeing him in 2015. Second, Applicant has substantial connections to the United States, primarily through his employment, and the fact that his parents are long-time naturalized American citizens living here. Third, Applicant testified at length about his lack of interest in Lebanese politics, and his life-long preference for the United States.

Applicant is knowledgeable about his security responsibilities and evinced a credible intent to follow appropriate rules in reporting any attempts by foreign actors to influence him. Applicant, his parents, his witness, and the people who wrote letters on his behalf, all state that he goes out of his way to not discuss his work. He is a young and extremely proud American citizen with a tremendous career ahead of him. Applicant has completely mitigated the security significance of his mother's outside activities and the presence of his uncle in Lebanon. Paragraph 1 is found for Applicant.

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(b), the ultimate determination of whether to grant national security 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but warrant additional comment. Applicant has shown himself to be a talented and patriotic American citizen and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States and absence of obligation or affinity towards Lebanon.

Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Wilford H. Ross
Administrative Judge