

KEYWORD: Foreign Influence

DIGEST: Applicant is a 48-year-old Lebanon-born, naturalized United States citizen, who came to the U.S. in 1979 and graduated from college. He served honorably in the U.S. Navy from 1986 to 1990, and has worked in the defense industry, with a security clearance ever since. His immediate family, all U.S. citizens, resides with him. His elderly mother and siblings are citizens/residents of Lebanon. His ties to Lebanon are minimal compared to those with the U.S. in the U.S. He is highly thought of by his colleagues. He has received security awareness training and strongly and credibly avers he will always protect U.S. interests. Mitigation has been shown. Clearance is granted.

CASENO: 05-11292.h2

DATE: 09/12/2007

DATE: September 12, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 05-11292
	)	
Applicant for Security Clearance	)	
	)	

**DECISION ON REMAND OF ADMINISTRATIVE JUDGE  
BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 48-year-old Lebanon-born, naturalized United States citizen, who came to the U.S. in 1979 and graduated from college. He served honorably in the U.S. Navy from 1986 to 1990, and has worked in the defense industry, with a security clearance ever since. His immediate family, all U.S. citizens, resides with him. His elderly mother and siblings are citizens/residents of Lebanon. His ties to Lebanon are minimal compared to those with the U.S. in the U.S. He is highly thought of by his colleagues. He has received security awareness training and strongly and credibly avers he will always protect U.S. interests. Mitigation has been shown. Clearance is granted.

### **STATEMENT OF THE CASE**

On November 28, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On December 5, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on January 3, 2006. A Notice of Hearing was issued on February 27, 2006, setting the hearing for March 15, 2006. The Government introduced four (4) exhibits (Government's Exhibits (GX) 1 - 4). Applicant testified, and introduced 34 exhibits (Applicant's Exhibits (AX) A - HH). The transcript was received on April 7, 2006. On June 26, 2006, I issued a decision favorable to Applicant, which Department Counsel appealed. On April 12, 2007, the Appeal Board issued a decision remanding the case to me with directions to correct the stated errors.

The Appeal Board noted that I had stated that "Lebanon is not officially recognized as hostile to the U.S., but it does contain some terrorist and other groups that are not friendly to the U.S." (Decision at page 2), treating my conclusion as a finding of fact (*Ibid.*, citing ISCR Case No. 02-20110 at n.2., App Bd. June 3, 2004. The Board found merit in Department Counsel's contention that I had erred in not taking "into consideration the substantial impact of terrorists, paramilitary organizations, and other extra-governmental organizations (Decision at page 3). After reviewing the record, the Board concluded that my "one passing reference to these matters is an inadequate basis for an in-depth analysis of Applicant's case" (*Id.*).

On Remand, I have again carefully considered the official notice documents submitted by Department Counsel at the hearing, the Department of State Travel Warning on Lebanon, dated December 28, 2005 (GX 2); Department of State Consular Information Sheet on Lebanon, dated December 29, 2005 (GX 3); and Department of State Background Note on Lebanon, dated December 28, 2005 (GX 4).

#### *Post Hearing Official Notice and Other Documents*

At my request, Department Counsel submitted copies of the documents cited by the Appeal Board, which he had also provided to Applicant. I received them on May 24, 2007 (Department Counsel Remand Documents). On June 25, 2007, I received Applicant's response to the documents

and several others off his own (Applicant's Remand Documents).

Pursuant to the Appeal Board order to reopen the record, I have considered the additional Official Notice documents that were issued after the original closing of the record in 2006. These include:

(1) Statement on the Situation in Lebanon, Papers of the Presidents (February 5, 2007). Specifically, that "Syria, Iran, and Hizballah are working to destabilize Lebanese society. Their goals are clear. They foment violence in order to prevent the establishment of a special tribunal in response to former Prime Minister Hariri's assassination, to prevent full implementation of U.S. Security Council resolutions calling for Hizballah's disarmament, and to bring down Lebanon's democratically elected government . . ."

(2) Statement of the Government of Syria, Public Papers of the Presidents (December 16, 2006). Specifically, that "Syria should disclose the fate and whereabouts of the many missing Lebanese citizens who 'disappeared' during the decades of Syrian occupation. The Syrian regime should also cease its efforts to undermine Lebanese sovereignty by denying the Lebanese people the right to participate in the democratic process free of foreign intimidation and interference."

(3) State of the Union Address, Public Papers of the Presidents (January 29, 2007). Specifically, that "Hizballah terrorists, with support from Syria and Iran, sowed conflict in the region and are seeking to undermine Lebanon's legitimately elected Government," and

(4) Travel Warning, United States Department of State (December 22, 2006). Specifically, that "Since the August [2006] cessation of hostilities between Israel and Lebanon, political terrorists in Lebanon have become a cause for concern in recent weeks. Hizballah maintains a strong presence in many areas of Lebanon" (ON 9).

I have also reviewed (5) President Bush's Address Before a Joint Session of Congress on the State of the Union, January 23, 2007, expressing serious concerns about Hizballah's interference in Lebanese affairs, with the assistance and encouragement of Syrian and Iran (Official Notice (ON) document 5, at pages 4, 5); (6) Executive Order 13338, May 13, 2004, which "Block[s] Property of Certain Persons and Prohibit[s] the Export of Certain Goods" (ON 6); U.S. Department of State Country Reports on Terrorism - Chapter 2- Middle East Middle East and North Africa Overview," which describes recent "major terrorist attacks [that] occurred in Algeria, Iraq, Saudi Arabia, Israel, Lebanon, and Egypt" with "political violence throughout the year" in Lebanon (ON 7).

Also, Department of State Press Statement: "United States Condemns Violence in Lebanon" (ON 8); U.S. Department of State Country Reports on Human Rights Practices - 2006 - Lebanon, which describes Hizballah interference in Lebanon (ON 10); U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet - Lebanon, May 24, 2007, which updates information relating to the specific risks to Americans traveling in Lebanon (ON 13); U.S. Department of State, Bureau of Near East Affairs, February 2007, Background Note: Lebanon, February 2007, which describes Hizballah's terrorist activities in Lebanon and against Israel (ON 14); and CRS Report for Congress - Lebanon, November 28, 2006, which discusses political and military conditions in Lebanon and Hizballah's continuing terrorist activities (ON 15).

Appeal Board Decision No. 02-29403 (December 14, 2004), cites the security clearance risks that could arise from terrorist activities, and concluded that “there is no good reason to assume that terrorists would overlook an opportunity to obtain an opportunity to obtain classified information for sale to the highest bidder as a means of obtaining funding for their terrorist activities” (ON 11).

The Appeal Board cites *Cytacki v. INS*, 996 F.2d 1214 (June 18, 1993) for the proposition that DOHA “may take official notice of uncontroverted facts concerning political conditions in asylum’ seeker’s home countries . . . ” (ON 12).

Taken together, all of the new Official Notice Documents, paint a picture of instability and terrorist activity in Lebanon, a country that is not officially hostile to the United States. For the most part, terrorism is aimed at destabilizing the Lebanese government and gaining control over areas of Lebanon. Hizballah is also active in terrorism against neighboring Israel, and to a lesser degree the United State and European countries. I accept Department Counsel’s view of the situation in that country as presented in his May 24, 2007 Reply to my Order. I do note recent developments showing significant efforts on the part of the Lebanese government to combat terrorism within its borders.

### **FINDINGS OF FACT**

Applicant is a 47-year-old manager for a defense contractor. The February 24, 2005 SOR contains six (6) allegations under Guideline B (Foreign Influence). Applicant admits all allegations, which are accepted and incorporated herein as Findings of Fact.<sup>1</sup>

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

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

1.a. - Applicant’s mother (73) is a citizen and resident of Lebanon, but now holds a U.S. Permanent Resident Card and makes visits to Applicant in the U.S., the last time being in late 2005 (Response to SOR and Tr at 27, 28). Her age and health problems make it unlikely she will be able to return to the U.S. His three sisters, and two brothers remain citizens and residents of Lebanon. His deceased father (2003) was a taxi driver most of his life.

1.b. - Applicant’s father-in-law and mother-in-law hold U.S. Permanent Resident Cards. The father-in-law is still in Lebanon, but the mother-in-law has come back to the U.S. and resides with Applicant and his wife. His three brothers-in-law are interested in immigrating to the U.S., as is one sister-in-law. One brother-in-law is a city traffic policeman. Other than that, none of his relatives have any connection with any level of government in Lebanon (Tr at 22).

1.c. - Applicant sends his mother approximately \$500.00 every two to three months, to assist her financially. Lebanon does not have any system like Social Security

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<sup>1</sup> At the hearing, SOR 1.a. was amended to delete the reference to Applicant’s father, who is now deceased.

1.d. - Applicant owns a home in Lebanon valued at approximately \$78,000.00. His home in the U.S. is worth about ten times that figure, and he has significant additional net worth.

1.e. - Applicant sent approximately \$35,000.00 to his brother-in-law (a civil engineer) in Lebanon, to construct the home in which Applicant and his family can stay when visiting Lebanon.

1.f. - Applicant traveled to Lebanon in 1991 and has returned three times since then. His last visit was in August 2005. He visits Lebanon primarily so that his daughters can get to know their uncles, aunts, and cousins. They all have and use only U.S. passports.

Applicant has been a U.S. citizen since 1984 (AX FF). He served in the U.S. Navy for four years (1986-1990), including a period aboard an aircraft carrier. He was honorably discharged in 1990, and has worked for a Navy civilian contractor ever since, with first a Secret DoD security clearance and then a Top Secret clearance.

He began his current employment as a technician, obtained an engineering degree, and eventually became a supervisor and program manager of up to 160 employees, dispersed in at least four locations in the U.S. and Asia (Tr at 18, 20, 21). He last attended and completed a Security briefing in May 2005 (AX BB, and Tr at 19). No problems of any kind are reflected in the record.

Applicant married his current, Lebanese-born, wife in 1991. She became a U.S. citizen in 1996. She is a nurse at a Veterans Administration hospital. They have two U.S.- born daughters, 10 and 12. Applicant has two grown sons from his first marriage (Tr at 25). The family is deeply involved in American life and education (Tr at 25-27). His first visit to Lebanon since becoming a citizen in 1979 was in 1991. He returned to visit his family in 2000, 2003, and 2005. He did not encounter any problems during any of his visits, the first two of which occurred during the Syrian occupation.

None of his relatives in Lebanon are aware of what he does or that his has a security clearance, or even what that term means. They are aware only that he is an engineer (Tr at 30).

Applicant's employer has given him certificates, awards, and consistently high evaluations (AX A, AX B, AX C, AX D, AX E, and Tr at 19-21). He is financially well off and has significant assets (AX F, AX G, AX H, AX I, AX J, AX K, AX L, AX M, AX N, AX O (the only property in Lebanon, estimated value of about \$78,000.00), and AX P. Eleven of his friends and colleagues, many of whom have known him for a decade or more, view him as dependable, a man of integrity, dedicated to the U.S. and U.S. security interests, and worthy of continuing to hold the security clearance he has held for some 20 years (AX T-AX Z, and AX CC, AX EE, AX FF, and AX GG). The contents of all of these documents are impressive in establishing Applicant's ties and contributions to his adopted country and its security interests.

## **POLICIES**

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether

it is “clearly consistent with the national interest” for an individual to hold a security clearance. An applicant’s admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant’s admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., “any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation’s security.” Viewed in an overall context, under E2.2.3. of the Directive, the ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an *overall common sense determination* based upon careful consideration of the following, each of which is to be evaluated in the *context of the whole person*. Explained further below (emphasis added):

*The Whole Person Concept:* Under E2.2.1., the DoD adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated 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.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: 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 voluntariness of participation; 6. The presence or absence of rehabilitation and other pertinent 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.

## CONCLUSIONS

Only Guideline B is alleged in the SOR and a careful analysis shows that the Government’s concern is focused not on any questionable conduct or statements by Applicant but, rather, on the fact of his relationships with his relatives in Lebanon.

*Foreign Influence<sup>2</sup> - The Concern:* A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

*Disqualifying Conditions:* 1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country; and 8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

*Mitigating Conditions:* E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

It is basic to the adjudication process that the ultimate burden of proof is on the Applicant and that any doubts must be resolved against the granting of a clearance. In this case, there is nothing in the evidence establishing whether or not Applicant's relatives in Lebanon are/may be/might be/could be agents of the Lebanese government or are in a position to be used, voluntarily or not, and knowingly or not, to seek to persuade Applicant to act against U.S. security interests. To the degree that there is a risk, it is a hypothetical one, based primarily on the undisputed presence of the relatives in Lebanon and his close relationship with them.

The concern in this case is really that Lebanese government authorities or non-governmental entities might put pressure on his relatives in Lebanon to persuade Applicant to act against U.S. interests. There is some evidence (from Applicant) that his relatives are not "agents" of a foreign power, but there is no evidence one way or the other as to whether they are susceptible to pressure from the Lebanese government or intelligence agencies, or whether they might ask Applicant to act against U.S. security interests (*see*, ISCR Case No. 99-0511 (December 12, 2000) at pp 8, 9; and ISCR Case No. 00-0485 (February 1, 2002) at p.4.

I understand and accept the premise that a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

What is absent from the record is any evidence supporting an inference that Applicant would feel "forced" to choose between his loyalty to them and to the United States. In fact, the contrary has been shown to be the case. There is no suggestion in the record that Applicant would voluntarily act against U.S. security interests or that he would respond to persuasion or pressure of any kind.

#### History of Decision Making in Guideline B Cases

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<sup>2</sup> The version of the Directive that is applicable in this case is the one that was applicable to cases wherein the SOR was issued prior to September 1, 2006.

DOHA experience indicates that the first filter for Guideline B cases sent to DOHA for consideration of an SOR being issued is Department Counsel, who can decline to issue SORs in cases not deemed appropriate for such issuance. An analysis of the favorable Guideline B cases that are issued by Administrative Judges but not appealed by Department Counsel indicates that among the generally accepted reasons for non-issuance are (1) that the foreign country was not deemed an espionage or information-gathering threat; and/or (2) that the ties/contacts were not close enough to raise the possibility that the Applicant might feel “forced to choose” between those ties and his loyalty to the United States. A comparison of decisions on the DOHA database shows that favorable decisions where the foreign country was deemed both friendly and not publically considered active in information gathering; e.g., Canada, Mexico, and United Kingdom, are rarely appealed by Department Counsel and so are rarely the subject of Appeal Board decisions.

Almost without exception, the cases appealed involve countries formally viewed as falling into three major categories:

(1) those hostile to U.S. interests, or considered unfriendly to the U.S.; e.g., Iran.

(2) those considered generally friendly or neutral toward the U.S., but which contain significant non-governmental organizations (NGOs) that are involved in terrorism or anti-US. activities; e.g., Jordan and Lebanon.

(3) those considered generally friendly to the U.S., but which are known to be active in espionage or at least, information gathering aimed at classified information or non-classified but sensitive proprietary information; e.g., Taiwan and Israel.

In the past, the Appeal Board has reversed or remanded favorable decisions issued by more than 30 DOHA Administrative Judges have granted clearances. In such cases, the Appeal Board found to be non-mitigating, extensive evidence of an applicant’s history in and close ties to the U.S., long time possession of a security clearance, an unblemished work record, and the receipt of high praise from his superiors and colleagues and awards for dedicated service to the national defense effort. As I understand these Appeal Board decisions, the abstract risks that an applicant might be asked to act improperly was found to outweigh the objective evidence of dedication, integrity, and averred commitment to protecting U.S. security interests.

After a thorough evaluation of the relevant language in both the pre- and post-September 1, 2006 versions of the Directive, I conclude that the drafters of the new version of the Directive have clarified their intent as to the meaning of the Guideline B Disqualifying and Mitigating Conditions stated in the version of the Directive applicable to this case . . .

In a recent decision, the Appeal Board stated the following:

Nevertheless, the Appeal Board does not hold an Administrative Judge’s decision to a standard of perfection. See ISCR Case No. 05-03143 at 2 (App. Bd., Dec. 20, 2007 [*sic*, presumably 2006]). In this case, there are numerous unchallenged findings of fact which cumulatively support the ultimate conclusion of the Chief Administrative Judge’s whole person analysis that Applicant has sufficiently strong ties to the United States to overcome the Government’s security concerns. These facts include: Applicant immigrated to the United States in 1982; Applicant has been a U.S. citizen since 1986; Applicant’s wife and children are U.S. citizens; Applicant has had a security clearance since 1991; and Applicant has not used a Jordanian passport since his arrival in the United States. Considering the record as a whole, the Chief Administrative Judge’s ultimate favorable security clearance decision is sustainable (ISCR CASE No. 02-17369 (April 5, 2007) at 2).

DOHA Appeal Board decisions based on Guideline B have traditionally focused on the identity of the foreign country and the nature of Applicants personal, business, and other connections to that country. In such cases, the risks of someone asking an Applicant to act against U.S. security interests was clearly treated as controlling and more important than the question of how the Applicant was likely to respond to such improper contacts.

The decision in ISCR Case No. 02-17369, cited above, is directly contrary to the earlier line of cases. The above cited language by the Appeal Board is unequivocal in stating the principle that the “whole person” concept must be given considerable weight and can be persuasive. In summary, taking into consideration the nature of the foreign country, compelling evidence of an Applicant’s integrity, judgment, trustworthiness, and dedication to U.S. security interests, can “overcome the Government’s concerns” (*Id.*). The personal background evidence in ISCR Case No. 02-17369 was detailed and impressive, but that in the present case is even more so.

Applicant has a solid record of maturity, integrity, and long service to his country. Despite whatever risk may exist because he has family in Lebanon, nothing in the record suggests he would hesitate before acting instinctively to protect U.S. interests.<sup>3</sup> Under the “whole person concept,” he has not done or said anything that raises any questions about where his loyalties, commitment, and dedication lie, nor does the record suggest any reason to deprive the United States of his valuable services. In summary, the record as a whole leads to the conclusion that Applicant has the integrity, good judgment, reliability, and trustworthiness required of anyone seeking a DoD security clearance.

### **FORMAL FINDINGS**

\_\_\_\_\_ Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

<i>Guideline B (Foreign Influence)</i>	For the Applicant
Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant

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<sup>3</sup> In a recent case, the Appeal Board accepted the Judge’s “emphasize . . . that Applicant credibly testified that he realized the security implications of his marriage and had repeatedly told his wife in blunt and graphic terms that he would not compromise national security under any circumstances, even if her family members were harmed by the PRC. Applicant has successfully rebutted the normal presumption that an applicant has ties of obligation or affection to his in-laws.” The Appeal Board also noted the Judge’s acceptance of Applicant’s testimony that he had complied with security procedures regarding his trip to the PRC to meet his fiancée. As a result, “the record supports the Judge’s conclusions, which are not arbitrary or capricious” (ISCR Case No. 04-06564 (May 30, 2006)). In the same case, the Appeal Board rejected the Government’s contention that the Judge’s “whole person analysis” was unsustainable. The Appeal Board found that the Administrative Judge had restated some of the Guideline B mitigating factors and presented a reasonable explanation for her decision, given the relevant factors in this case, making the favorable decision sustainable.

Subparagraph 1.c.	For the Applicant
Subparagraph 1.d.	For the Applicant
Subparagraph 1.e.	For the Applicant
Subparagraph 1.f.	For the Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**BARRY M. SAX**  
**ADMINISTRATIVE JUDGE**