



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



In the matter of:)
)
) ISCR Case No. 12-05609
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

Decision

TUIDER, Robert J., Administrative Judge:

In 1962, Applicant was born in Lebanon. In 1984, he moved to the United States, and in 2002, he became a U.S. citizen. His spouse is a dual citizen of the United States and Lebanon. His mother-in-law lives with Applicant most of the year; however, she spends three months a year in Lebanon. He has substantial property in Lebanon. Lebanon is unstable, and Lebanon’s Government has allowed terrorist organizations to flourish in Lebanon. Foreign influence concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On January 26, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of security clearance application (SF 86) (Item 6). On September 17, 2012, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline B (foreign influence). (Item 1) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On October 1, 2012, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 4, 5) A complete copy of the file of relevant material (FORM), dated February 12, 2013, was provided to him on February 22, 2013. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant did not respond to the FORM. The case was assigned to me on May 8, 2013.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning Lebanon. (FORM; Administrative Notice Request, February 8, 2013) Department Counsel provided a list of supporting documents to show verification, detail and context for these facts in his Administrative Notice request. Applicant did not object to me taking administrative notice of all of the facts in all of the documents.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from Government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact²

Applicant admitted the underlying facts alleged in SOR ¶¶ 1.a to 1.l with explanations. (Item 4) After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant was born in Lebanon 50 years ago, and he immigrated to the United States in 1984. (Item 1) He became a U.S. citizen in 2002. (Item 1) He has worked as a senior information technology architect for a defense contractor since 2005. (Item 1) His security clearance was denied on October 25, 2007, because of foreign influence. (Item

¹The DOHA transmittal letter is dated February 14, 2013, and Applicant's receipt is dated February 22, 2013. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

7 at 2; Item 9; ISCR Case No. 07-25959 (A.J. Oct. 25, 2007) Applicant's spouse is a dual citizen of the United States and Lebanon. (Item 4; SOR ¶ 1.a) She was born in Lebanon 1984; she moved to the United States in 2005; and she became a U.S. citizen in 2008. (Item 4, 7 at 2) His three children were born in 2002, 2006, and 2007. (Item 1) His three children live with Applicant and his spouse in the United States. (Item 1)

Applicant's father-in-law, mother-in-law, brother-in-law, brother, half-sister, and some of Applicant's and his spouse's extended family members are citizens and residents of Lebanon. (Item 4; SOR ¶¶ 1.b-1.d, 1.e, and 1.g-1.i)

Applicant's mother-in-law spends most of her time living with Applicant and his spouse in the United States. (Item 4) His mother-in-law visits Lebanon about three months a year. (Item 7 at 3) Applicant and his spouse have frequent contact with her. (Item 7 at 3)

Applicant's sister, who was living in Lebanon, died in 2010. (SOR ¶ 1.f) Applicant's spouse's parents are divorced, and he has no contact with his father-in-law. (Item 4; SOR ¶ 1.c) Applicant contacts his brother about once a year (SOR ¶ 1.e; Item 7 at 2); he has not communicated with his half-sister for more than four years (SOR ¶ 1.g; Item 7 at 3); Applicant communicated about twice in the last five years with his brother-in-law and sister-in-law (SOR ¶ 1.d, Item 7 at 5); and he has very limited contact with his and his spouse's extended family members living in Lebanon. (SOR ¶¶ 1.h and 1.i; Item 7 at 5)

Applicant inherited two apartments in Lebanon, which are for sale. (Item 4; SOR ¶ 1.j) He also inherited part ownership of a farm and a vacation home in Lebanon. (Item 4; SOR ¶¶ 1.k, 1.l)

Applicant made trips to Lebanon in 2004, 2005, 2006, and 2011. (Item 6) His property interests in Lebanon were a key component of the denial of his security clearance in 2007. (ISCR Case No. 06-25959 (A.J. Oct. 25, 2007); Item 9 at 4) He estimated the value of his property interests in Lebanon at \$75,000 to \$100,000. (Item 2) He did not divest himself of the property he owned in Lebanon. (Item 4)

Applicant has important connections to the United States. He has lived in the United States for more than half of his life. He and his spouse are U.S. citizens. His three children were born in the United States and live with Applicant and his spouse. (Item 1, 9) He owns property in the United States, and he is employed by a U.S. employer. (Item 9)

Lebanon

Lebanon is a parliamentary republic. Syria heavily influences Lebanon's foreign policy and internal policies. Syria maintains intelligence agents in Lebanon and is a state sponsor of terrorism. The unstable political situation in Lebanon allows foreign terrorist organizations to operate within its borders. The Lebanese government recognizes Hezbollah, an entity designated by the United States as a "Foreign Terrorist

Organization,” as a legitimate resistance group and political party. Hezbollah maintains offices in Beirut and elsewhere in Lebanon, has liaison officers to Lebanese security forces, and is represented by elected deputies in the Lebanese parliament. Hezbollah is closely allied with Iran, supports a variety of violent anti-Western groups, and has been involved in numerous terrorist attacks.

Lebanon has a poor human rights record. Lebanese security forces have engaged in arbitrary arrest, murder, torture, and other abuses. Government corruption and lack of transparency are common. Militias and non-Lebanese forces operating outside the area of Lebanese central government authority have used informer networks and monitored telephones to obtain information about their perceived adversaries.

U.S. citizens, who also possess Lebanese nationality, may be subject to laws that impose special obligations on them as Lebanese citizens. There are periodic travel warnings for U.S. citizens traveling to Lebanon due to the threat against westerners.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole-person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus,

nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(d) sharing 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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has a close relationship with his spouse. He communicates frequently with her and her mother-in-law. Applicant, his spouse, and mother-in-law were born in Lebanon, and his mother-in-law lives in Lebanon three months of the year. Applicant's interest in a vacation house, apartment, and farm in Lebanon are substantial property interests. His property interests in Lebanon and his relationship with his mother-in-law when she is in Lebanon are available for potential coercion from the Lebanese government or terrorists. Aside from Applicant's relationship with his spouse and mother-in-law, his relationships with others living in Lebanon is too attenuated to raise a security concern. Applicant's spouse's relationship with her family living in Lebanon, except for her mother, is not sufficiently developed to establish the applicability of AG ¶ 7(d).

Applicant's communications with his spouse and mother-in-law are frequent. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. Applicant's relationship with his mother-in-law, when she is living in Lebanon, is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." His relationships with his spouse and mother-in-law create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his mother when she is in Lebanon. For example, if the Lebanese government or terrorists in Lebanon wanted to expose Applicant to coercion, it could exert pressure on his mother-in-law or through his mother-in-law to his spouse. Applicant would then be subject to indirect coercion through these relationships and classified information could potentially be compromised.

The mere possession of close family ties with a family member living in Lebanon is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has

a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 or terrorist coercion or inducement. 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 collection operations against the United States, or terrorist activity causes widespread fear or destruction. The relationship of Lebanon with the United States and terrorist activity in Lebanon places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his mother-in-law when she is living in Lebanon does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his mother-in-law when she is living in Lebanon because she might be threatened or coerced by terrorists or other governmental entities in Lebanon.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists in Lebanon seek or have sought classified or economic information from or through Applicant, his spouse, or his mother-in-law living in Lebanon, it is not possible to rule out such a possibility in the future. Applicant and his spouse's communications with his mother-in-law living in Lebanon are frequent. Applicant and his spouse continue to feel an obligation to her and affection for her. Applicant's concern for his spouse and mother-in-law is a positive character trait that increases Applicant's trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence and raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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 U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. 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 cognizant security authority;

(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.

AG ¶¶ 8(a), 8(b), 8(c), and 8(f) have limited applicability. Applicant traveled to Lebanon most recently in 2011. Applicant has frequent contact with his spouse and his mother-in-law, who is in Lebanon three months of the year. Applicant has quite limited contacts with his other relatives in Lebanon, and security concerns relating to them are fully mitigated. The amount of contacts between an applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced through their relatives. Because of his connections to his spouse and mother-in-law, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationship with his mother-in-law, who lives in Lebanon three months a year] could create a risk for foreign influence or exploitation." It is evident that Applicant and his spouse feel an obligation to his mother-in-law's welfare.

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. Applicant and his spouse have three children. Applicant, his spouse, and three children live in the United States and are U.S. citizens. Applicant owns property in the United States, and he is employed by a U.S. company.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his spouse and mother-in-law, who lives in Lebanon three months of the year. There is no evidence that terrorists, criminals, the Lebanese government, or those conducting espionage have approached or threatened Applicant, his spouse, or his mother-in-law to coerce Applicant to obtain classified or sensitive information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' recent relationship with Lebanon, and especially Lebanon's systematic human rights violations and the ever present danger from terrorists and those who seek to damage U.S interests. The numerous murders of innocent civilians by terrorists in Lebanon, including Hezbollah, makes it more likely that terrorists would attempt to coerce Applicant through his spouse or mother-in-law especially when she is living in Lebanon, if the terrorists determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with his spouse or mother-in-law. Applicant is not required to report his contacts with his mother-in-law living in Lebanon.

AG ¶ 8(f) has some applicability. Applicant has substantial property interests in the United States, which include his employment in the United States, and the value of his home and investments in the United States. However, this mitigating condition is not applied through a weighing and comparison of the interests in the United States and the interests in a foreign country. The property interests in Lebanon are substantial and important to Applicant, or he would have divested himself of these interests before his hearing. His property interests in Lebanon are not resolved as a security concern.

In sum, the primary security concerns are Applicant and his spouse's relationship with her mother, and his property interests in Lebanon. His mother-in-law is readily available for coercion when she is in Lebanon. Although the Lebanese government's failure to follow the rule of law further increases the risk of coercion, the major cause of concern is the prevalence of terrorists in Lebanon. Applicant visited Lebanon in 2011, and he may visit Lebanon in the future to enjoy his vacation home. His visits to Lebanon do not raise a security concern in this case because they are not recent and there is no specific information about when he might return to Lebanon, but it is important to note his travel to Lebanon.

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

- (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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant has strong connections to the United States. Applicant was born in Lebanon 50 years ago, and he immigrated to the United States in 1984. He became a U.S. citizen in 2002. His spouse and three children are U.S. citizens. He has significant property interests in the United States. There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He is loyal to the United States and he considers the United States to be his home.

The circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Applicant's mother-in-law lives in Lebanon three months of the year. Terrorists have killed many residents of Lebanon in the last several years, and would not hesitate to coerce Applicant through his mother-in-law to obtain classified information. Applicant and his spouse have frequent contact with his mother-in-law, and they are committed to her welfare. When Applicant's mother-in-law is in the United States, security concerns relating to her possible coercion are substantially alleviated; however, there is a lingering concern because his mother-in-law is probably close to relatives, who are living in Lebanon and available for coercion. Applicant has substantial property interests in Lebanon, and he has not divested himself of this property, even though his property interests in Lebanon were raised in his 2007 security clearance case. These substantial and long-standing connections to Lebanon raise an unmitigated security concern.

A Guideline B decision concerning Lebanon must take into consideration the geopolitical situation in Lebanon, as well as the dangers existing in Lebanon.³ Terrorists are able to strike anywhere in Lebanon. The danger of coercion from terrorists in Lebanon is more likely than in many other countries. I have continuing doubts that Applicant's mother-in-law living in Lebanon will remain safe from terrorist coercion should Applicant receive access to classified information.

³ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	Against APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c to 1.i:	For Applicant
Subparagraphs 1.j to 1.l:	Against Applicant

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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert J. Tuider
Administrative Judge