



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



In the matter of:	)	
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	)	ISCR Case No. 13-00134
Applicant for Security Clearance	)	

**Appearances**

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

04/08/2014

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns regarding foreign influence and financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) in July 2012. On July 15, 2013, the Department of Defense (DOD) issued 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 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an answer dated July 27, 2013, Applicant admitted all allegations and requested a decision without hearing. On September 25, 2014, the Government prepared a File of Relevant Material (FORM), which included nine attachments. The final attachment was a request for administrative notice regarding Lebanon. Applicant did not respond to the FORM. The case was assigned to me on March 31, 2014, by the

Defense Office of Hearings and Appeals (DOHA). After receiving the official case file, I reviewed its contents in its entirety.

### **Request for Administrative Notice**

Department Counsel submitted a Request for Administrative Notice regarding certain facts about the nation of Lebanon. It was accepted into the record as part of the FORM. 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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Various facts pertaining to Lebanon were derived from the offered request and its attachments; other facts are derived by similar Government publications introduced in other DOHA cases and commonly known.

I take administrative notice of the following facts. Lebanon is a republic with an imperfect human rights record. Lebanese security forces arbitrary arrest, detention, and torture of detainees is a problem. Militias and non-Lebanese forces from outside the central government's authority frequently violate citizens' privacy rights.

Lebanon has both a long history of civil war and of foreign influence by Syria. Syria has been designated by the United States as a state sponsor of terrorism, providing support to Hezbollah. From 1976 to 2005, Syria maintained troops in Lebanon and the Syrian military is believed to maintain intelligence assets in Lebanon. Lebanon is not a state sponsor of terrorism. It is, however, a permissive environment for groups recognized by the U.S. as terrorist organizations. The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. Hezbollah is a Lebanese-based radical group that is the most technically capable terrorist group in the world. The United States remains extremely concerned about the role Hezbollah plays in Lebanon.

The U.S. State Department maintains a travel warning for U.S. citizens contemplating travel to Lebanon. Lebanon is not known to be a collector of intelligence or economic information against the U.S.

### **Findings of Fact**

Applicant is 49-year-old linguist working in the defense sector. Born and raised in Lebanon, he immigrated to the United States in 1982. Applicant married in 1987. The couple subsequently had four children, all of whom were born in the United States. Applicant was granted a United States passport in 2007. He self-identified as a dual-citizens until he formally renounced his Lebanese citizenship in 2012. He has not earned an academic diploma or degree, or served in any military. Applicant has been highly praised by his professional superiors and peers for his skills and service.

The SOR states (1.a-1.c), and Applicant admits, that Applicant's father, his brother and his brother's wife, and three sisters and two of their husbands are citizens

and residents of Lebanon. Also noted (SOR at 1.d) is that Applicant's mother-in-law is a citizen of Lebanon residing in the United States. Regarding these kin, Applicant noted:

- Applicant's father lives in a nursing home in Lebanon, for which an unspecified sister of Applicant pays for his care. The father sometimes stays with this unspecified sister;
- Applicant's brother and the brother's "x-wife" still remain in Lebanon. (Answer to SOR) Applicant does not know his brother's current address. Applicant had not had contact with his brother for six months before his July 2013 SOR response. Applicant noted that if he did have contact "past that time, it would be on Facebook or Skype." (Answer to SOR);
- Applicant offered the names of his three sisters in Lebanon. One sister is a widow and the other two sisters are divorcées. Applicant does not know their present addresses. He communicates with them through Facebook and Skype. He offered no information regarding the divorcées' husbands;
- Applicant offered a copy of his mother-in-law's green card, but no other information about her was given except for her United States address, which is in the vicinity of Applicant's home.

Also at issue in the SOR are two debt-related allegations. (SOR 2.a-2.b) First, Applicant filed for Chapter 7 bankruptcy protection in 2007, and the included debts were discharged the following year. Second, Applicant was past due on a mortgage in the approximate amount of \$160,000. This account remained unpaid through at least the date of the July 2013 SOR. Applicant admits both allegations.

Little insight is provided regarding the bankruptcy in Applicant's response to the SOR. He noted, however, that he has "had a hard time paying mortgage cause (sic) I have 3 kids in colleges. I tried with Bank to get a loan modification multiple times, but [it] refused." (Answer to SOR) Applicant continued by noting that he had hired a particular lawyer to help him "on this process," explaining he had lost his linguist job in April 2013 after six years of service due to a reduction in force. He wrote that "everything is on hold now until I go back [to work], but I can't without my clearance." He asserts that returning to work will help him get "back on track" financially. He additionally notes that he has incurred one jaywalking ticket since coming to the United States. Applicant provided several highly positive recommendations from former colleagues.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 access to classified information 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. Likewise, I have not drawn 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. Under Directive ¶ E3.1.15, 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 to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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 relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

Applicant has various family members who are Lebanese citizens, residents, or both. These include a father, siblings, spouses of siblings, and a mother-in-law. He maintains contact with most, if not all of them. Therefore, I find that the following disqualifying conditions arise under AG ¶ 7:

AG ¶ 7(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.

AG ¶ 7(b) connection 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.

In finding these conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Lebanon. Moreover, the Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. These facts are sufficient to find a heightened risk exists in this case. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an Applicant may be subject to coercion or undue influence when a third party pressures or threatens an Applicant's family members. Under these facts, a third party coercion concern potentially exists in Lebanon. The evidence provided is sufficient to note a heightened risk and to raise the above disqualifying conditions.

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

AG ¶ 8(a) the nature of the relationship 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., and

AG ¶ 8(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 interests in favor of the U.S. interests.

Applicant has the burden to demonstrate evidence sufficient to refute or mitigate the allegations.

Here, the primary concern is Applicant's relationships with his father, siblings, his siblings' spouses, and his mother-in-law. Other than the fact Applicant apparently maintains contact with his siblings via Facebook and Skype, little is offered regarding these family members abroad or his relationships with them. Consequently, it is as difficult to examine Applicant's foreign family members as it is to weigh his closeness to his extended family against his ties to the United States. Although there is clearly no suggestion of disloyalty on the part of Applicant, more information needs to be provided in order for Applicant to carry his burden in this matter. Given these factors, I find that none of the available mitigating conditions apply.

#### **Guideline F, Financial Considerations**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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 information. An individual who is financially overextended is at risk of engaging in illegal acts to generate funds.

Here, Applicant admitted that he availed himself of Chapter 7 bankruptcy protection in 2007 and that he is past due to his mortgagor in the approximate amount of \$160,000. While bankruptcy is a legitimate avenue for addressing unwieldy debt, the past-due mortgage poses considerable concern. Therefore, I find that two financial considerations disqualifying conditions apply:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(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;

AG ¶ 20(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's mortgage became past due as a result of his loss of work after a reduction in force. Lacking sufficient income to pay for his obligations, including the mortgage, he sought a home loan modification. His requests were rebuffed by his bank. He then solicited the help of an attorney. Such facts are sufficient to raise AG ¶ 20(b) in terms of his acquisition of the considerable past-due debt at issue.

Applicant failed, however, to provide any documentary evidence of his lawyer's efforts on his behalf or, in fact, any documentation regarding any attempts to address the past-due mortgage. While there is no reason to suspect Applicant's written comments are not accurate and sincere, this process requires some level of documentation to support one's narrative regarding actions taken to address one's debts. Here, the record is deficient in terms of documentation offered to show that Applicant has a reasonable plan to address his debt, and has successfully implemented that plan. Without such evidence, none of the other mitigating conditions apply.

### **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(a). 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 incorporated my comments under the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 49-year-old linguist working in the defense sector. Born and raised in Lebanon, he immigrated to the United States in 1982. He married in 1987, and the couple has four children. Applicant has never served in the military of any country. He does not have an academic degree or diploma. He has been highly praised for his work as a linguist.

Applicant admitted all allegations regarding his family members who are citizens and residents of Lebanon, and regarding his mother-in-law, who is a citizen of Lebanon living in the United States near Applicant and his wife. Unfortunately, the information he offered about those relations, their families, and his relationships with them is scant, and the information offered regarding Applicant's life in the United States is far from thorough. Such deficiencies undermine a proper analysis under the AG for foreign influence.

While Applicant's 2007 bankruptcy may raise general financial issues, his notably large past-due balance on his mortgage raises serious financial security concerns. His written narrative reflects that he initially took reasonable steps to deal with the financial hardships that followed his loss of employment following a reduction in force. However, the absence of documentation supporting Applicant's narrative confounds a proper analysis under the AG.

In these proceedings, the burden is placed squarely on the Applicant. Here, Applicant failed that burden due to insufficient information and documentation. Consequently, I find that foreign influence and financial considerations security concerns remain unmitigated.

### **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-1.d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge