



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



In the matter of:	)	
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	)	ISCR Case No. 13-01065
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

June 25, 2014

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On December 13, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E for Applicant. 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 Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on January 4, 2014, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on March 17, 2014. DOHA issued a notice of hearing on March 31, 2014, and I convened the hearing as scheduled on April 15, 2014. The Government offered Exhibits 1 through 8, which were received and admitted without objection. Applicant testified on his own behalf and submitted Exhibits A through G, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on

April 23, 2014. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the Republic of Lebanon. The request and the attached documents were admitted into evidence as Exhibit 8. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 55 years old. He was born in Beirut, Lebanon in 1958, and he moved to the United States in 1984. He became a United States citizen in 1990. (Tr at 50-52.) Applicant is a dual citizen of the United States and Lebanon. (Exhibit 5.)

Applicant has been married to his present wife since 1996, and he was previously married to his first wife from 1985 to 1993. He has three children. He received an Associate of Arts degree in Philosophy in Lebanon in 1984. (Tr at 52-56.) Applicant is employed as a linguist by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 (Guideline B - Foreign Influence)**

The SOR lists eight allegations regarding Foreign Influence, under Adjudicative Guideline B:

1.a. It is alleged in the SOR that Applicant's wife is a dual citizen of the United States and Lebanon and resides in the United States. Applicant admitted this allegation in his RSOR. Applicant testified that his wife lives with him. She is employed as an assistant teacher. (Tr at 63.)

1.b. It is alleged in the SOR that Applicant's mother is a citizen and resident of Lebanon. Applicant denied this allegation in his RSOR. Applicant testified that his mother has a "green card" from the United States, and she lives in Lebanon for part of the year and in the United States for the other part of the year. When she is in the United States, he talks to his mother every day. Applicant's mother is a housewife. (Tr at 58- 61.)

1.c. It is alleged in the SOR that Applicant has three brothers who are citizens and residents of Lebanon. Applicant denied this allegation in his RSOR. Applicant testified that he speaks to his brothers approximately once a year. None of them has

ever worked for the Lebanese Government. Currently one is retired, one works for a bakery, and the third brother lives off of his savings. (Tr at 60-63.)

1.d. It is alleged in the SOR that Applicant has one brother who is a dual citizen of the United States and Lebanon and resides in the United States. Applicant admitted this allegation in his RSOR. Applicant testified that this is his older brother, and this brother takes care of his two children who are both autistic. (Tr at 63-64.)

1.e. It is alleged in the SOR that Applicant has four sisters who are citizens and residents of Lebanon. Applicant admitted this allegation in his RSOR. He testified that all of his sisters are housewives, and he speaks to them approximately once a year. (Tr at 64.)

1.f. It is alleged in the SOR that Applicant has one sister who is a dual citizen of the United States and Lebanon and resides in the United States. Applicant admitted this allegation in his RSOR. Applicant testified that this sister is also a housewife. (Tr at 65.)

1.g. It is alleged in the SOR that Applicant's father-in-law and mother-in-law are citizens and residents of Lebanon. Applicant admitted this allegation in his RSOR. He testified that they are both retired, and while his wife speaks to them regularly, Applicant never does. (Tr at 66.)

Applicant testified about an incident that occurred when he was at the airport in Lebanon after being stationed there. Because he had missed his flight, Applicant was eating at a restaurant at the airport with his nephew. Applicant received a telephone call from a United States Army colonel, who was the commanding officer of the base, telling Applicant that he wanted to have him picked up at the airport. Applicant stated that he did not want to bring attention to himself by being picked up in a military vehicle so he refused the colonel's command. (Tr at 85-87.)

Applicant testified that the colonel continued calling him several times, and he got more angry demanding that he be available to be picked up, but Applicant continued to refuse the colonel's order. Applicant told the colonel that he would leave Lebanon on the next day, but he would not make himself available to be picked up. Finally, as the colonel continued to call him, Applicant simply turned off his phone. Ultimately he returned the next day, and partially because of this event, the colonel told him he wanted him removed from the contract. Applicant conceded that it was his responsibility to follow the orders of the colonel, but he was afraid that it could be problematic to his family who lived in Lebanon, if people in Lebanon were aware that he was working for the United States military. (Tr at 87-95.) Applicant refused the direct order of a colonel because of his concern for his family's welfare.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

2.a. It is alleged in the SOR that Applicant was deemed as “Persona Non Grata” by the commanding officer of an overseas location due to an unauthorized leave of absence; falsification of information to a foreign military official; and, for accusations of collecting sensitive information without permission or authority from the United States Government. Applicant denied this allegation in his RSOR. In his Subject Interview, Applicant conceded that he was informed that he was being terminated because he provided a false name to a foreign military colonel, he took unauthorized leave, and he obtained intelligence in an inappropriate manner. He immediately returned to the United States and was terminated from his employment. (Exhibit 5.)

2.b. It is alleged in the SOR that Applicant was terminated from his employment with a United States government contracted company on November 24, 2010, due to the information set forth in subparagraph 2.a., above. Applicant denied this allegation in his RSOR. Applicant testified that the colonel had threatened to terminate his position because of his failure to respond to his order. However, Applicant claimed that his manager in the field told him that he was going to be moved to a different area, rather than be terminated. Applicant testified that because his company lost its contract, he was ultimately lost his position. (Tr at 89-100.) An Incident History was submitted that established Applicant was released from further employment for the following reasons: “conducting himself in an unprofessional manner which jeopardized the success of an ongoing exercise,” “unauthorized leave,” “provided falsified information to foreign military officials, creating distrust between [foreign] govt and US,” and “accused of actively collecting sensitive information without permissions [sic] or authorities, with regard to private [foreign] state manner.” (Exhibit 4.)

2.c. It is alleged in the SOR that Applicant failed to provide truthful and candid answers to subsection 2 of Question 13A on a Security Clearance Application (SCA) that he executed on November 1, 2011. (Exhibit 1.) The question asked whether Applicant, during his job history in the last seven years, had ever been Fired; Quit after being told he would be fired; Left by mutual agreement following charges or allegations of misconduct; or Left by mutual agreement following notice of unsatisfactory job performance. Applicant answered, “No,” and it is alleged in the SOR that Applicant, deliberately failed to disclose the information set forth in paragraph 2.a., and 2.b., above. Applicant denied this allegation in his RSOR. He testified that he did not intend to misrepresent information to the United States Government. (Tr at 95-100.)

In his Personal Subject Interview, Applicant stated that he did not indicate on his SCA that he was terminated because he did not think he did anything wrong. (Exhibit 5.) I find that Applicant was terminated as reviewed in 2.b., above, and whether or not he believed that the termination was justified, he should have answered, “Yes,” to this question and explained that his conduct had resulted in his termination.

## **Mitigation**

Applicant submitted two positive character letters in which his work as a linguist was highly praised. Applicant also submitted a citation that he received for superior performance of his duties as an interpreter. (Exhibit 4.) Additionally, Applicant

introduced additional positive letters of recommendation (Exhibit B), Certificates of Appreciation (Exhibit D), pictures of coins and patches that he received from his Commanding Officer because of the good work that he did (Exhibit E) (Tr at 30-33), and pictures of Applicant performing his job. (Exhibit F.) I reviewed and considered all of the mitigating material submitted by Applicant.

### **Current Status of Lebanon**

I take administrative notice of the following facts regarding Lebanon. Lebanon became an independent country in November 1943. Its history since independence has been marked by periods of political turmoil interspersed with prosperity. The country's 1975 to 1990 civil war was followed by years of social and political instability.

Neighboring Syria has long influenced Lebanon's foreign policy and internal policies, with its military forces in Lebanon from 1976 to 2005. After Syria's withdrawal, the Lebanon-based Hizballah militia and Israel continue to engage in attacks and counterattacks against each other and fought a brief war in 2006. Syria, designated by the United States as a state sponsor of terrorism, has provided political and weapons support to Hizballah, a U.S. designated "Foreign Terrorist Organization" in Lebanon.

United States citizens have been the target of numerous terrorist attacks in Lebanon in the past, and the threat of anti-Western terrorist activity continues to exist in Lebanon. Hizballah and other para-military groups have at times detained U.S. citizens or other foreigners for interrogation.

### **Policies**

When evaluating an applicant's suitability for 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 useful 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 over-arching 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 avoided drawing inferences grounded on mere speculation or conjecture.

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

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

### **Paragraph 2 (Guideline B - Foreign Influence)**

AG ¶ 6 expresses the security concern regarding Foreign Influence:

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 describes conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: 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.” Applicant’s family members, who are citizens and residents of Lebanon, make AG ¶ 7(a) a concern to the Government. Applicant showed by his direct and wilful failure to follow the orders of a United States Army Colonel and his commanding officer as a result of his fear of the safety of his family in Lebanon, that he is at “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”

AG ¶ 8 provides conditions that could mitigate security concerns. I do not find that 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 interest in favor of the U.S. interest,” is applicable to this Applicant because, as reviewed above, Applicant failed to follow the direct order of his Commanding Officer because of the apprehension that if he followed that order it could potentially cause harm to his family if he did so.

I also find that no other mitigating condition under AG ¶ 8 can be applied. As a result of the disqualifying condition considered with the lack of any applicable mitigating circumstances, I conclude Guideline B against Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Because Applicant was deemed to be “Persona Non Grata” by an overseas United States commanding officer, he was terminated from his employment for cause, and he failed to provide the information about his termination on a security clearance questionnaire, I find that Applicant’s conduct supports Disqualifying Conditions ¶ 16(a) and 16(d) respectively; “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications . . . determine security clearance eligibility or trustworthiness . . .,” and “a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations.” I do not

find any mitigating condition under ¶ 17 is applicable. I, therefore, resolve Guideline E against 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 the 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case under Guidelines B and E. Based on all of the reasons cited above as to why the disqualifying condition apply and why the mitigating conditions are not applicable under either Guideline, I find that the evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

### **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.g.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a . - 2.c.:	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.

Martin H. Mogul  
Administrative Judge