



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



In the matter of: )  
)  
) ISCR Case No. 14-00646  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

06/09/2014

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On March 14, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. DOD acted 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 on September 1, 2006.

Applicant answered the SOR on April 2, 2014. He requested a hearing before an administrative judge. The case was assigned to me on May 5, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5, 2014, with

a hearing date of May 29, 2014. The hearing was convened as scheduled. The Government offered exhibit (GE) 1, which was admitted into evidence without objection. I marked Department Counsel's discovery document as hearing exhibit (HE) I and his exhibit list as HE II. Administrative notice-related documents were marked as HE III. Applicant testified and offered exhibits (AE) A - C that were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 9, 2014.

### **Procedural Ruling**

Department Counsel requested that I take administrative notice of facts concerning the country of Lebanon.<sup>1</sup> Department Counsel provided supporting documents that verify, detail, and provide context for these facts in the Administrative Notice request. See the Lebanon section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on these countries.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>2</sup> Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports.<sup>3</sup>

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 54 years old. He was born in Lebanon in 1959 and became a naturalized U.S. citizen in October 1993. He holds a Ph.D. He is a dual citizen of Lebanon and the United States. He is married and his wife is a naturalized citizen of the United States and she is also a dual citizen of France. His two adult children reside in the United States and were born in this country. He believes he holds a clearance through the U.S. Department of Commerce, but no further evidence was offered to confirm or refute his belief. He has no history of military service in the U.S. military.<sup>4</sup>

Applicant left Lebanon when he was 16 or 17 years old because of the ongoing civil war. His family's religious affiliation affected their status in Lebanon. He went to France for his undergraduate degree and met his future wife at that time. In 1983, he

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<sup>1</sup> Tr. at 24-25; See HE III.

<sup>2</sup> 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)).

<sup>3</sup> See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

<sup>4</sup> Tr. at 29, 43, 46, 63, 65; GE 1.

left France to pursue advanced degrees in the United States. He is the founder and senior scientist of a defense contracting company. His wife is an officer or director of the company. He is also a professor and has worked for DOD through those academic contacts for 25 years.<sup>5</sup>

Applicant's brothers are dual citizens of France and Lebanon, with one brother residing in Lebanon and the other residing in France. Both brothers work in private industry. His son and daughter are citizens of the United States, France, and Lebanon with their Lebanese and French citizenship based upon their parents' places of births. His children have only visited Lebanon when he has taken them to see his mother.<sup>6</sup>

His 83-year-old mother is a citizen and resident of Lebanon. His mother is a homemaker. His father died in 1997. He visits his mother approximately once a year. His last visit was in November 2013. When he goes to Lebanon to visit his mother he stays with her and does not venture out or visit anyone else. When his mother passes away, he will have no reason to visit Lebanon. He has telephonic contact with his mother about once every week or two.<sup>7</sup>

Applicant owns real estate and has significant bank accounts in Lebanon. The property was acquired as an inheritance upon his father's death. The property consists of a beach apartment and a flat where his mother lives. There is other property he acquired through inheritance along with his brothers and his mother that has not been partitioned. The value of his portion of these real estate holdings is approximately \$500,000. Once his mother passes away he intends to sell all his Lebanese holdings. He has two bank accounts in Lebanon. The first was established to provide a source of funding for his mother after his father passed away. That account is valued at \$375,000. Applicant, his mother, and one brother have access to this account. The second account is used by Applicant to fund his expenses when he travels to Lebanon. It is valued at about \$93,000. He intends to close the accounts and bring the funds to the United States when his mother passes away. Applicant disclosed in great detail all of his foreign holdings on his security clearance application.<sup>8</sup>

The value of Applicant's Lebanese assets, \$968,000, can be compared to Applicant's United States net worth, which he approximates at between \$12 and \$13 million. He provided documented tax returns showing his annual income for 2013 and 2012 of approximately \$1.4 million and \$1 million, respectively. He also documented the value of his home at over \$6 million. He testified that the remaining portion of his net worth was investments and savings. He pointed out that he paid almost as much in

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<sup>5</sup> Tr. at 16-17, 41.

<sup>6</sup> Tr. at 29, 31, 36-37, 47-50.

<sup>7</sup> Tr. at 30, 46-47, 63.

<sup>8</sup> Tr. at 31-33, 54-56, 63; GE 1.

federal and state taxes for 2013 (\$594,744) as comprise his Lebanese assets. He stated that he owes all of his financial success to the opportunities the United States has afforded him throughout the time he has lived here.<sup>9</sup>

## **Lebanon**

Lebanon is a parliamentary democracy in which people have the constitutional right to change their government. Due to civil war the exercise of political rights were precluded until 1992. Lebanon has a free-market economy and a strong laissez-faire commercial tradition. The economy is service-oriented. The United States enjoys a strong exporter position with Lebanon and is its fifth largest source of imported goods. More than 160 offices representing U.S. businesses operate in Lebanon. Since the lifting of passport restrictions in 1997, a number of large U.S. companies have opened branch or regional offices in Lebanon.

The foreign policy of Lebanon reflects its geographic location, the composition of its population, and its reliance on commerce and trade. Its foreign policy is heavily influenced by neighboring Syria, which has also long influenced Lebanon's internal policies as well. Lebanon, like most Arab states, does not recognize Israel, with which it has been technically at war since Israel's establishment.

Lebanon has had some human-rights problems including the arbitrary arrest and detention of individuals and instances of arbitrary and unlawful deprivation of life, torture, and other abuses.

The terrorist group Hezbollah is a Lebanese-based radical Shi'a group and is designated by the United States as a "Foreign Terrorist Organization." The Lebanese government recognizes Hezbollah as a "legitimate resistance group" and political party and until recently was represented by elected officials in the Lebanese parliament. Hezbollah also provides support to several Palestinian terrorist organizations and is known to be involved in numerous anti-United States and anti-Israeli terrorist attacks. Americans have been the targets of numerous terrorist attacks in Lebanon.

The United States seeks to maintain its traditionally close ties with Lebanon and to help preserve its independence, sovereignty, national unity, and territorial integrity. The United States provides more than \$400 million in aid to Lebanon and pledged \$1 billion in additional aid. The aid reflects the importance the United States attaches to Lebanon's development as a unified, independent and sovereign country.

U.S. citizens who also possess Lebanese nationality may be subject to laws that impose special obligations on them as Lebanese citizens. Presently, there is a travel warning for U.S. citizens traveling to Lebanon due to the threat against westerners.

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<sup>9</sup> Tr. at 68; AE A-C.

## 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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

### 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 three 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 creates a potential conflict of interest between the individual’s obligations to protect sensitive information or technology, and the individual’s desire to help a foreign person, group, or country by providing that information; 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 is a dual citizen of the United States and Lebanon. Applicant’s mother is a citizen and resident of Lebanon. His two brothers are dual citizens of France and Lebanon and one brother resides in Lebanon. His son and daughter are citizens of the United States, France, and Lebanon (through the birthplace of their parents). Applicant owes real estate and substantial bank accounts in Lebanon. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8:

(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.

Applicant was born in Lebanon, fled to France to achieve his undergraduate degree, came to the United States to earn his Ph.D., and ultimately achieved U.S. citizenship in 1993. He married a dual French and U.S. citizen. They have two children who are native-born United States citizens and have no affiliation with Lebanon except for their father's Lebanese heritage. They are financially secure and have established well-grounded lives in this country. He traveled to Lebanon over the years to see his mother. There was no evidence to suggest that any of his Lebanese relatives are influenced by the politics of Lebanon. He has minimal contacts with his brothers. Merely knowing people from other countries does not create a heightened risk. I find that Applicant has deep and longstanding relationships and loyalties in the United States. Lebanon has some issues with human rights. His relatives do not have jobs or contacts with the Lebanese government. It is unlikely that Applicant would be placed in a position of having to choose between the interest of a relative and the United States. It is clear that even in the unlikely event such a situation would arise he would choose in favor of the interests of the United States Therefore, I find AG ¶¶ 8(a) and 8(b) apply to SOR ¶¶ 1.a-1.f.

Applicant's property interests in Lebanon are large, but insignificant when contrasted to his income and assets in the United States. I find AG ¶ 8(f) applies to SOR ¶¶ 1.g-1.i.

### **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. Applicant has spent the last 31 years in the United States where he became a citizen and has enjoyed a successful career that has left him financially secure. He has also raised a family in this country.

I considered the totality of Applicant's family ties to Lebanon. Lebanon is a parliamentary republic which traditionally has maintained close ties with the United States. However, 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."<sup>10</sup> The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. Nevertheless, 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 coercion. The risk of

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<sup>10</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).



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 or the country is known to conduct intelligence operations against the United States. Also important is whether the foreign country is associated with a risk of terrorism.

Lebanon has human-rights issues and has been victimized by terrorism. The influence of Syria and the presence of Hezbollah in Lebanon is a concern. However, Applicant has proven his support for the United States through his contractor work over the past 25 years with DOD in the academic environment.

Applicant's life, career, substantial assets, and allegiance all lie in the United States. After considering all the evidence, including Applicant's extensive and detailed disclosure concerning all his Lebanese contacts in his security clearance application, I am convinced that this country is best served by granting Applicant a security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant

### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge