

DATE: January 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16608

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The security concerns raised by a 37-year-old Lebanon-born naturalized U.S. citizen Applicant (also a citizen of Lebanon) with a Lebanon-born mother and three siblings, all of whom are naturalized U.S. citizens residing in the U.S., and an aunt and cousins who are citizens and residents of Lebanon, with whom he does not maintain close ties of affection or obligation, none of whom are agents of that foreign government or in a position to be exploited by that foreign government, have been mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On July 21, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. 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 a clearance should be granted, continued, denied, or revoked.

In sworn written statements, dated August 7, 2003, and September 25, 2003, respectively, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on October 20, 2003. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He apparently chose not to do so. The case was assigned to me on January 14, 2004.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a. through 1.e.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor, and he is seeking to obtain a security clearance the level of which has not been divulged.

Applicant was born in 1966 in Lebanon of Lebanese parents.⁽²⁾ During the Lebanese civil war in 1977, his father immigrated to the United States,⁽³⁾ and one year later, Applicant (at the age of 12), his mother, two brothers, and one sister, also immigrated to the United States.⁽⁴⁾ Both his parents and all three siblings, as well as Applicant himself, became naturalized U.S. citizens.⁽⁵⁾ Everyone but the sister were naturalized in the 1980s, and she was naturalized in 1999. Applicant was naturalized in 1989.⁽⁶⁾ Applicant's father is deceased.⁽⁷⁾ His mother and three siblings reside in the United States.⁽⁸⁾ He also has several aunts and cousins who are citizens and residents of Lebanon.⁽⁹⁾

Applicant has no retirement rights, benefits, or financial interests in Lebanon.⁽¹⁰⁾ He has never served in the Lebanese military and would never bear arms for Lebanon.⁽¹¹⁾ Applicant's father served in the Lebanese army and his mother owns property in Lebanon, of an undisclosed value, and now receives a pension from the Lebanese Government based on his father's military service.⁽¹²⁾

Since his arrival in the United States Applicant has adopted American culture, been educated in the U.S., started a career, and voted in U.S. elections.⁽¹³⁾ He owns property in the U.S.⁽¹⁴⁾

Although he retains some feelings towards Lebanon, he would be willing to renounce his Lebanese citizenship.⁽¹⁵⁾ Applicant has never held a Lebanese passport.⁽¹⁶⁾

It is not known when he commenced his current position. The quality of his professional performance has not been characterized.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

GUIDELINE B - FOREIGN INFLUENCE: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(17\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. 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.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, his mother, two brothers, and a sister are dual citizens of Lebanon and the United States (and residents of the United States), and his aunt and cousins are citizens and residents of Lebanon--are either not citizens or residents of the United States or may be subject to duress. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the

compromise of classified information. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5. [\(18\)](#)

The citizenship status of Applicant's immediate and extended family, when considered in light of the nature of the government in the Lebanese Republic--a constitutional republic which, to my understanding, has been wracked by civil war from 1975 until 1991, and which is still partially occupied by Syrian military forces and several terrorist organizations--makes an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein, a bit more difficult. Applicant's mother, two brothers, and his sister, as well as himself, are already naturalized U.S. citizens, and only the continuing dual Lebanese citizenship of their birth, gives cause for concern. The Lebanese citizenship and residency of his aunt and cousins, raises the issue of potential foreign influence as well. In this regard, see Foreign Influence Disqualifying Condition (DC) E2.A2.1.2.1. (*an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*).

It is with some interest that I note that the Department Counsel has made no distinction between Applicant's immediate family--all of whom are dual citizens and residents of the United States--and the members of his extended family--all of whom are citizens and residents of Lebanon. Furthermore, no evidence has been offered by the Government indicating any sinister Lebanese intentions or activities, such as industrial espionage or active collection of foreign economic information, directed towards the United States. Likewise, I have seen no indication in *Annual Reports to Congress on Foreign Economic Collection and Industrial Espionage* prepared by the National Counterintelligence Center, or in the *Intelligence Threat Handbook* published by The Interagency OPSEC Support Staff, commenting on any such activities or threats posed by Lebanon.

Also applicable, in this instance, is Foreign Influence Mitigating Condition (MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*), and MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). After an examination of the evidence, I determine that Applicant's mother and siblings, as well as himself, considering their citizenship and residency status, notwithstanding the property she owns in Lebanon or pension she receives from Lebanon because of his late father's prior military service, do not constitute an unacceptable security risk. His entire immediate family is comprised of long-standing residents of the United States who have chosen to make their life here with their allegiance to the country of their acquired citizenship, rather than the country of their birth. Their continuing personal relationships with each other have no security significance. Moreover, none of the members of his immediate family are agents of Lebanon or in a position to be exploited by Lebanon. Considering the absence of any scintilla of evidence that they are targets of any intelligence gathering efforts, their citizenship and residency status does not establish any doubts regarding possible duress.

Also, the citizenship and residency of Applicant's aunt and cousins, are of insubstantial concern because there is no evidence that they are persons with whom Applicant has close ties or affection or obligation. Applicant and his family departed Lebanon in 1977-78, Applicant has never held a Lebanese passport, [\(19\)](#) and in the past seven years he has not traveled outside of the United States. [\(20\)](#) There is no evidence to indicate the aunt and cousins residing in Lebanon have what could be construed as close ties of affection or obligation. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.e. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

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 THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

DECISION

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

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted six items in support of its contentions.
2. Item 7 (Security Clearance Application (SF 86), dated December 18, 2000), at 1, 4.
3. Item 8 (Statement, dated August 24, 2001), at 1.
4. *Id.*
5. Item 7, *supra* note 2, at 5, 10-12.
6. Item 8, *supra* note 3, at 1.
7. Item 7, *supra* note 2, at 4.
8. *Id.*
9. Item 2 (Response to SOR, dated August 7, 2003; Item 5 (Response to SOR, dated September 25, 2003).
10. Item 8, *supra* note 3, at 2.
11. *Id.*, at 1-2.
12. Item 2, *supra* note 9; Item 5, *supra* note 9.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*

17. Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

18. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.

19. Item 8, *supra* note 3, at 1.

20. Item 7, *supra* note 2, at 6.