



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



In the matter of:

SSN:

Applicant for Security Clearance

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ISCR Case No. 07-06623

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

July 8, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the foreign preference and foreign influence security concerns arising from her relationship and contacts with Lebanon and Lebanese citizens. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her security clearance applications on September 24, 2007 (Electronic Questionnaires for Investigations Processing (e-QIP)) and on March 27, 2006 (Standard Form 86). On October 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence).¹

¹ 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR (Answer) on November 26, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on January 17, 2008. DOHA issued the initial notice of hearing on January 18, 2008. The hearing was postponed at the Government's request. DOHA issued the second notice of hearing on February 26, 2008. The hearing was convened as scheduled on March 24, 2008. The government offered exhibits (GE) 1 through 5, which were admitted without objection (Tr. 20).² Applicant testified on her own behalf, and presented two exhibits, marked AE 1 and 2, which were received without objection. DOHA received the transcript of the hearing (Tr.) on April 1, 2008.

Findings of Fact

In her answers to the SOR, Applicant admitted all the SOR allegations, except for ¶ 1.d, which she denied. Her admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 25-year-old budget analyst working for a defense contractor. She was born, in the United States to a Lebanese-American father and an American mother. Her father came to the United States at age 18. He was afraid of the war in Lebanon (Tr. 64) and entered the United States as a political refugee seeking work and college education. He became a naturalized U.S. citizen, married a U.S. native citizen and completed his higher education in the United States. According to Applicant, her father dislikes the politics in Lebanon, and but for his retirement entitlement, he would have moved to the United States (Tr. 65). Her father plans to live in the United States after he retires from his job in Lebanon (Tr. 51).

When Applicant was two years old, her father took a job with a U.S. organization doing business in Lebanon (Tr. 36). He took his wife and Applicant to Lebanon where she grew up and was educated until around age 20. Applicant received her bachelor's degree from a U.S. state university operating in Lebanon. She attended elementary and Lebanese schools that were supported by American interests. After college, she worked one year for a Lebanese company.

Since leaving the United States at age two, Applicant returned to the United States for the first time in 2002 to visit her aunt during a two week period. In 2003, she moved to the United States to attend graduate school. In 2004, Applicant went back to Lebanon for two weeks to visit her father because he missed her. She started her master's degree in 2006 and expects to graduate in May 2008 (Tr. 5-6). She has been employed by a defense contractor during the last two and one-half years. She had interim access to classified information at the secret level during the same period.

² GE 5 was marked for identification and considered for administrative notice only.

Her supervisor considers Applicant to be a very bright and hard working employee. In his opinion, she is honest and forthright. He believes Applicant is very happy being a mother and enjoying the benefits and privileges of being a U.S. citizen. Applicant's supervisor recommends her for a position of trust and to receive access to classified information without reservations (AE 1).

Applicant has two siblings who were also born in the United States. Her parents came back to the United States whenever her mother was ready to deliver her children. Her mother was assassinated in Lebanon when Applicant was a child (Tr. 67). Applicant testified she was raised by her father with little assistance from their extended family members living in Lebanon (Tr. 68). Her father remarried when Applicant was around 12 years old. Her step-mother helped raise her; however, Applicant stated they were never close (Tr. 69). She also has a step-brother.

Applicant has four uncles, five aunts, and approximately 30 Lebanese cousins who are residents and citizens of Lebanon (Tr. 70). She has two uncles who retired from the Lebanese Army (Tr. 72-73), and four cousins who are currently serving in the Lebanese Army. According to Applicant, all of them served as enlisted soldiers (Tr. 71-73). While in Lebanon, she had frequent contact with her Lebanese extended family. Since immigrating to the United States, she has had limited contact with her extended family members (Tr. 74).

Applicant claimed she does not have a close relationship with any of her extended family members in Lebanon. She only corresponds on a regular basis with her father. She used to e-mail him every day and call him once a week. Now that she is taking care of her child and attending school, she corresponds with her father by e-mail once a week and telephonically once a month. Applicant denies any contact or correspondence (phone calls, e-mails, or letters) with her aunts, uncles, and cousins in Lebanon (Tr. 46-48). To her knowledge, none of her siblings or family members have connections to Hezbollah or the government of Syria. She claimed her extended family members are hostile to both organizations.

In 2006, Applicant married a U.S. native citizen (Tr. 30, 40). He is a self-employed musician, has never been to Lebanon, and according to Applicant has no interest in ever visiting Lebanon. Applicant and her husband have a 10-month-old daughter who was born in the United States (Tr. 63), and they are expecting a son in July 2008 (Tr. 40). Applicant considers her children American citizens and does not intent to apply for Lebanese citizenship or identification for her children.

Applicant credibly testified she considers herself an American and that her home is in the United States. She has no plans to ever return to Lebanon to work or to retire. She never voted in Lebanese elections, joined any political party, or worked for the Lebanese government (Tr. 32). Applicant admitted she is very close to her father and would not like anything bad to happen to him; however, she has no reason to favor her father over her husband and child (Tr. 31). Applicant and her husband own a \$350,000

home in the United States, a car, and around \$25,000 in liquid assets. They own no assets in any foreign country, including Lebanon.

At her hearing, Applicant reaffirmed her October 2007 (Tr. 71) offer to renounce her Lebanese citizenship and to surrender her Lebanese passport. Applicant's father obtained a Lebanese passport for her when she applied for college. She needed the passport as identification to be able to attend college in Lebanon. Although she possessed a U.S. passport, Applicant used her Lebanese passport to travel to the United States in 2001, 2003, and 2004 (Tr. 53). Concerning her initial reluctance to renounce her Lebanese citizenship and to surrender her Lebanese passport, Applicant explained she mistakenly believed she would have to return to Lebanon and renounce her citizenship in front of her town elders. In doing so, she was concerned she would have placed her father and extended family at risk, and would have been required to disclose she was applying for a security clearance (Tr. 32). She has learned she can renounce her Lebanese citizenship at the Lebanese embassy in the United States and intends to do so in the near future.

Applicant brought her Lebanese passport to her hearing. She destroyed her Lebanese passport in front of Department Counsel (Tr. 56). She then gave the pieces of her cut passport to her facility security officer (FSO) for safekeeping (AE 2). Applicant considers herself a loyal American. She promises to work for the United States in the war against terror. She believes her expertise in the Arabic language, Middle East culture, and his professional expertise would well serve the United States (Tr. 29-30).

I take administrative notice of the following facts. Lebanon's government is a parliamentary democracy. Lebanon and the United States have a long-standing friendly relationship. It has been the policy of the United States to help Lebanon preserve its independence, sovereignty, national unity, and territorial integrity.

Lebanon is 95% ethnic Arab. Its population is comprised of various Muslim sects, Christian groups, and Druze. The three largest population groups are Shi'a and Sunni Muslims and Maronite Christians. Lebanon became the situs of several terrorist organizations over the past 30 years that have engaged in armed conflict with Israel and Western countries. The Lebanese government recognizes those organizations as legitimate resistance groups. Lebanon exempts "legal resistance" groups from money laundering and terrorism financing laws. The Lebanese government recognizes Hezbollah, a terrorist group, as "a legitimate resistance group." Hezbollah derives its power and influence from Lebanon's Shi'a community, which makes up about one-third of Lebanon's population. Hezbollah maintains offices in Beirut and elsewhere in the country and has elected deputies in Lebanon's Parliament. It also operates a comprehensive system of health and education services in several parts of the country.

Even though Syria withdrew its military forces from Lebanon in April 2006, it maintains a covert intelligence presence in Lebanon and offers support for and smuggles arms to Hezbollah and Palestinian terrorist groups operating in Lebanon. The Lebanese government's inability to exercise authoritative control in the Hezbollah-

dominated south of Lebanon and inside Palestinian-controlled refugee camps enables terrorists to operate freely in Lebanon. Hezbollah's continued attacks to Israel continue to create instability in the region.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.³

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 controlling adjudicative goal is a fair, impartial and common sense 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 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."⁴ 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

³ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ *Egan*, *supra*, at 528, 531.

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

Guideline C, Foreign Preference

Under Guideline C the government’s concern is that “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.” AG ¶ 9.

Applicant was born in the United States to a U.S. naturalized Lebanese father and a U.S. native citizen mother. She is a dual citizen of the United States and Lebanon. Her parents took her to Lebanon at age two and she was raised and educated as a Lebanese citizen. Applicant’s possession and use of a Lebanese passport in preference of her U.S. passport constitutes an exercise of dual citizenship and raises security concerns under Guideline C. While in Lebanon, she enjoyed the privileges and rights of a Lebanese citizen to include, attending Lebanese schools, the use of a Lebanese passport, owning bank accounts and working in Lebanon. Foreign preference disqualifying condition AG 10(a): “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes . . . (1): possession of a current foreign passport . . . , (3) accepting educational, medical, retirement, social welfare, or other such benefits,” applies.

In 2004, at age 21, she travelled to the United States and since then she has made the United States her home. She married a U.S. native American, and she has a U.S. born daughter and is expecting a son. All of Applicant’s financial and economic ties are in the United States. She has no financial, economic, or proprietary interests in any foreign country. Since October 2007, Applicant has stated her intent to surrender her Lebanese passport and to renounce her Lebanese citizenship. The day of her hearing she destroyed her Lebanese passport and later surrendered it to her FSO.

Applicant credibly testified she was reluctant to renounce her Lebanese citizenship because she mistakenly believed she would have to go back to Lebanon to renounce her citizenship in front of her town elders. She was concerned such action could have placed her father and extended family at risk, and that she could have been

required to disclose she was seeking a security clearance. These facts warrant application of Foreign Preference Mitigating Conditions AG ¶¶ 11(b): “the individual has expressed a willingness to renounce dual citizenship;” 11(c): “exercise of the rights, privileges, or obligations of foreign citizenship occurred . . . when the individual was a minor;” and 11(e): “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” apply. Applicant has mitigated the foreign preference security concerns.

Guideline B, Foreign Influence

Under Guideline B, the government’s concern is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 ¶ 6.

AG ¶ 7 sets out two conditions that could raise a security concern and may be disqualifying in this case, including:

- (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; and
- (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁵ Applicant has frequent contacts and a close

⁵ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

relationship of affection and/or obligation with her parents (father and stepmother) and siblings. Her parents and siblings are citizens and residents of Lebanon. The closeness of the relationship is shown by Applicant's frequent e-mail and telephone contacts with her father, Applicant's travel in 2004 to see her father because he missed her, and her parents visit to her in the United States. This contact creates a risk of foreign pressure or attempted exploitation because there is always the possibility that Lebanese agents or terrorists may exploit the opportunity to obtain information about the United States. Her connection to her father and siblings also creates a potential conflict of interest because her relationships are sufficiently close to raise a security concern about her desire to help them by providing sensitive or classified information.

These close relationships create a heightened risk of foreign pressure or attempted exploitation because the Lebanese government allows terrorist organizations to operate legally within its borders. The Syrian government maintains intelligence operations within Lebanon and provides support to terrorist organization within Lebanon. Both terrorist organizations and Syria have interests adverse to the United States and have organizations that collect sensitive military and technological information against the United States. Applicant's connections to her Lebanese family also create a potential conflict of interest because her relationships are sufficiently close to raise a security concern about her desire to help her family by providing sensitive information. Applicant's relationship with her parents creates a heightened risk of foreign inducement, manipulation, pressure or coercion because they reside in Lebanon and could be subjected to Lebanese or terrorist pressure.

The government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

- (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; and

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that only mitigating condition AG ¶ 8(b) partially applies.

Since 2003, Applicant has made the United States her home. She attended a graduate program and has worked hard for a defense contractor for approximately two years. She married a U.S. Native American. Her daughter was born in the United States and she is expecting a son who will also be born in the United States. All of Applicant's financial and economic ties are in the United States. Since October 2007, Applicant has stated her intent to renounce her Lebanese citizenship and destroyed her Lebanese passport. She has promised to use her skill and abilities to assist the United States in its war against terror. Although Applicant is close to her father, she is closer to her immediate family, i.e., her husband and children in the United States. For the above states reasons, I believe that Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest.

Guideline ¶ 8(a) and 8(c) do not apply. Appellant did not establish "it is unlikely [she] will be placed in a position of having to choose between the interests of [her Lebanese family] and the interests of the U.S." Her frequent contacts and close relationships with her Lebanese family members could potentially force her to choose between the United States and Lebanon. She did not meet her burden of showing there is "little likelihood that [her relationships with her Lebanese family members] could create a risk for foreign influence or exploitation."

The nature of Lebanon's government, its recognition and support of terrorist organizations within its borders, its interaction with Syria, and the presence of Syria's intelligence operatives in Lebanon are relevant in assessing the likelihood that Applicant's family members are vulnerable to government coercion. 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, or the country is known to conduct intelligence operations against the United States. The relationship between Syria and the United States, as well as the U.S.' war on terror, increases the burden of persuasion on Applicant to demonstrate that her immediate family members in Lebanon do not pose a security risk and she will not be placed into a position to be forced to choose between loyalty to the United States and her Lebanese family members.⁶ It is likely that terrorist organizations or Syrian operatives in Lebanon would target any citizen in an attempt to gather classified or sensitive information from the United States.

⁶ See generally ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See also ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran).

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.

Numerous circumstances weigh against Applicant in the whole person analysis. Her parents, siblings, and extended family are citizens and residents of Lebanon. Applicant has strong ties of affection and or obligation to her parents and siblings. Her family is vulnerable to coercion or exploitation by a foreign power or terrorist organizations doing business in Lebanon.

Four of Applicant's cousins and two uncles (retired) served in the Lebanese Army. Applicant's father works for a U.S. sponsored organization within Lebanon. Likely, the Lebanese government or factions within the country are aware of her travel to the United States. Applicant's family contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Lebanese agents, Syrian agents, and/or terrorists may attempt to use Applicant's family members living in Lebanon to obtain information about the United States.

On the other hand, Applicant credibly asserted her loyalty to the United States, and her desire to help the United States in its war against terror. Applicant lived in Lebanon because she was a minor under the control of her parents. Her mother was assassinated in Lebanon and her death was never investigated. She attended schools in Lebanon with a strong American influence. When she turned 21 in 2003, she moved to the United States and has lived in the United States since. In a short period, she has established strong roots in the United States -- her husband and children are U.S. citizens, and all of her financial and economic interests are in the United States.

Additionally, for two years she has worked hard for a government contractor earning his trust and his endorsement for her to have access to classified information. She credibly asserted her willingness to renounce her Lebanese citizenship. There is no

evidence she has ever taken any action which could cause potential harm to the United States, or that he lacks honesty and integrity. There is no evidence that she has revealed to her family in Lebanon the nature of her work or about applying for a security clearance.

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government’s compelling interest in security by denying or revoking [a] clearance.” *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990).

On balance, after weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns pertaining to foreign preference.

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 C:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline B:	For APPLICANT
Subparagraphs 2.a-2.c:	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’s security clearance. Eligibility for access to classified information is granted.

JUAN J. RIVERA
Administrative Judge