



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-08243
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 26, 2009

**Decision**

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LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern that arises from his relatives residence in Lebanon and his frequent travels to that country to visit with them. Clearance is denied.

On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on April 7, 2009. He admitted the allegation contained in SOR subparagraph 1.a, denied the allegation contained in SOR subparagraph 1.b, and admitted the allegation contained in SOR subparagraph 1.c, with clarification. Applicant requested a hearing.

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on April 27, 2009. A notice of hearing was issued on May 4, 2009, scheduling the hearing for May 12, 2009. The hearing was conducted as scheduled. The government submitted 19 documentary exhibits that were marked as Government Exhibits (GE) 1-19. GE 1-5 were admitted into the record without objection. Administrative notice was taken of the contents of GE 6-19 without objection. Department Counsel submitted a document containing written comments on the contents of GE 6-19 which was marked as Appellate Exhibit (App. Ex.) I and made part of the record without objection.

Applicant testified but did not submit any documents at the hearing. The record was held open at Applicant's request to provide him the opportunity to submit letters of recommendation. Three letters were timely received, marked as Applicant's Exhibits (AE) 1-3 and admitted into the record without objection. Department Counsel's forwarding e-mails were collectively marked as App. Ex. II and are included in the case file. The transcript was received on May 20, 2009.

### **Procedural Matters**

Upon receipt of the file, I was notified by Department Counsel that Applicant would be physically present in the United States for a limited period of time during which the hearing could be conducted in person. Upon Applicant's arrival in the United States, I held a conference call with Applicant and Department Counsel. During that call, Applicant requested that the hearing be held in person at DOHA's Virginia headquarters while he was in the United States. He also agreed to waive the 15-day notice requirement and to travel to the DOHA Virginia headquarters at his own expense. (Tr. 26-29)

The SOR in this case indicated Applicant was applying for a public trust position. At the hearing, Department Counsel stated this was in error, that Applicant was applying for a security clearance, and Department Counsel moved to amend the SOR to conform therewith. The record was held open to provide Department Counsel the opportunity to obtain verification that Applicant's employer was in fact sponsoring him for a security clearance as opposed to a public trust position. A written motion to amend the SOR and the employer's verification that it was sponsoring Applicant for a security clearance were timely received, marked as App. Ex. III and App. Ex. IV and are included in the case file. Department's Counsel's motion to amend the SOR, in the manner requested in his written motion, is hereby granted.

Following the presentation of all evidence, Department Counsel moved to amend the SOR to add the following allegation:

1.d. Your father-in-law is a citizen and resident of Lebanon.

That motion was granted without objection. Applicant admitted this allegation and stated he did not need additional time in which to prepare a response to the allegation. (Tr. 106-114)

## Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 39-year-old man who has been employed by a defense contractor since 1995. He has been assigned as a project manager in Qatar by his employer since January 2007. In 2004, he was assigned by his employer to work as a project manager in Germany. His other assignments with this employer have all been in the United States.

Applicant was born in Lebanon. He attended high school and college in Lebanon and he earned a bachelor of arts degree in mathematics in Lebanon in 1992. In 1993, Applicant moved to France to continue his education. After attending a French college for one semester, Applicant immigrated to the United States to continue his education in January 1994. He was 23 years old when he arrived in the United States. Applicant was awarded a master of science degree in computer science from a United States college in June 1995. He became a naturalized United States citizen on September 11, 2000, and he obtained a United States passport on October 2, 2000.

Applicant has two brothers, ages 43 and 42. One brother immigrated to the United States from Lebanon in 1992, and the other brother immigrated to the United States from Lebanon in 1999. Both brothers are naturalized United States citizens and they both reside in the same geographic area within the United States. Both brothers are also employed as municipal police officers.

Applicant's mother and father immigrated to the United States from Lebanon in 1993. They became naturalized United States citizens in either 1998 or 1999. Applicant's father was a retired police officer in Lebanon. He is now deceased. Applicant's mother has not worked outside the home since she immigrated to the United States. She resides in the same geographic area as Applicant's brothers within the United States.

Applicant first married in October 1995. That marriage ended in divorce in 2001. Applicant was married a second time in May 2004. That marriage ended by an annulment in or about July 2005. No children were born of either of these marriages.

In 2006, Applicant met his current wife through mutual friends while he was vacationing in Lebanon. They have been married since May 2007.<sup>2</sup> Applicant's wife is a Lebanese citizen, but she resides with Applicant in Qatar. One child was born of this marriage in April 2008. The child was born in Lebanon because Applicant and his wife decided to have the child delivered there due to a problematic pregnancy that necessitated a caesarean section delivery. Applicant's wife was more comfortable having the surgery performed by a physician with whom she was familiar in Lebanon. The child is a United States citizen by virtue of Applicant's United States citizenship.

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<sup>2</sup> Applicant's wife is the woman who was alleged to be his girlfriend and a citizen and resident of Lebanon in SOR subparagraph 1.b.

Applicant has two sisters who are citizens and residents of Lebanon. One sister is 45 years old, married and has a 12-year-old daughter. She is a lawyer and her husband is an engineer. Applicant's other sister is 36 years old, married and has three children. She previously worked as a teacher, but she has now returned to school. Her husband is a medical doctor. Applicant speaks with his sisters by telephone one to three times a month. He has frequently visited with his sisters in Lebanon since he immigrated to the United States, including visits in April 2009, and April, August and December 2008. The April 2008 visit occurred when Applicant's child was born in Lebanon; the August 2008 visit occurred during his father's funeral in Lebanon; and the April 2009 visit occurred when Applicant and his family visited Lebanon to celebrate his son's birthday.

Applicant's father-in-law is a 76-year-old citizen and resident of Lebanon. He is a retired accountant. Applicant's wife speaks with her father by telephone weekly to bi-weekly. Applicant's wife has two brothers. One lives in Canada and the other in Saudi Arabia.

Applicant was granted eligibility to hold a public trust position in or about 2004. No adverse action was ever taken to revoke or suspend that eligibility. There is no record evidence to suggest that Applicant at anytime risked the compromise of sensitive information while holding a public trust position.

Applicant's manager attests that Applicant is loyal, dedicated, discreet and trustworthy. Two of Applicant's co-workers, including a United States Air Force Reserve Senior Master Sergeant, wrote that they have found Applicant to be an invaluable resource to the project they work on and that he is dedicated and diligent. Applicant's references all vouch for his integrity.

A United States Department of State document entitled: *Lebanon Country Specific Information*, dated August 20, 2008, provides the following information:

The Republic of Lebanon is a parliamentary republic. . . . Since 1973, Lebanon has been in a state of war with Israel. . . .

\* \* \*

Americans have been the targets of numerous terrorist attacks in Lebanon in the past. The perpetrators of many of these attacks are still present and retain the ability to act. On January 15, 2008, a U.S. Embassy vehicle was involved in a bomb attack that killed three Lebanese bystanders. American citizens should keep a low profile, varying times and routes for all required travel. Americans should also pay close attention to their personal security at locations where Westerners are generally known to congregate, and should avoid demonstrations and large gatherings. . . .

Palestinian groups hostile to both the Lebanese government and the U.S. operate largely autonomously inside refugee camps in different areas of the country. . . . Asbat al-Ansar, a terrorist group with apparent links to Al-Qaida, has targeted Lebanese, U.S. and other foreign government interests.

\* \* \*

**SPECIAL CIRCUMSTANCES:** In addition to being subject to all Lebanese laws, U.S. citizens who also possess Lebanese nationality may also be subject to other laws that impose special obligations on them as Lebanese citizens. Lebanese citizens who are discovered to have associated with or traveled through Israel, are subject to arrest and detention. (GE 7)

A United States Department of State Travel Warning, dated September 10, 2008, provides the following information about Lebanon:

. . . The Department of State continues to urge that Americans avoid all travel to Lebanon. . . .

Recent clashes in the northern city of Tripoli have resulted in more than twenty deaths and numerous injuries. Additionally, a bomb exploded next to a city bus in Tripoli on August 13, 2008 and killed fourteen people. The U.S. Embassy advises U.S. citizens against all travel to Lebanon and recommends that U.S. citizens in Lebanon consider the risk of remaining, particularly in Tripoli in light of recent incidents there.

On May 7, 2008, Hizballah militants blocked the road to Rafiq Hariri International Airport. The action rendered the airport inaccessible and travelers were unable to enter or leave the country via commercial air carriers. Armed Hizballah and other opposition members proceeded to enter areas of Lebanon not traditionally under their control resulting in heavy fighting and a number of casualties. While there is now full access to the airport and widespread hostilities have subsided, the United States is concerned about Hizballah's willingness to use violence to achieve political ends with little or no warning.

The threat of anti-Western terrorist activity exists in Lebanon; groups such as Al-Qaeda and Jund al-sham are present in the country and have issued statements calling for attacks against Western interests in the past. (GE 8)

A United States Department of State document entitled: *Country Reports on Terrorism 2008*, dated April 30, 2009, provides the following information:

Hizballah was designated as a Foreign Terrorist Organization on October 8, 1997. Formed in 1982, in response to the Israeli invasion of Lebanon, this Lebanese based radical Shia group takes its ideological inspiration from the Iranian revolution and the teachings of the late Ayatollah Khomeini. . . . Hizballah is closely allied with Iran and often acts at its behest, though it also acts independently. . . . Hizballah remains the most technically-capable terrorist group in the world. It has strong influence in Lebanon's Shia community, which comprises about one-third of Lebanon's population.

. . . Hizballah provides support to several Palestinian terrorist organizations, as well as a number of local Christian and Muslim militias in Lebanon. The support includes the covert provision of weapons, explosives, training, funding, and guidance, as well as overt political support.

\* \* \*

**Activities:** Hizballah is known to have been involved in numerous anti-U.S. and anti-Israeli terrorist attacks; prior to September 11, 2001, it was responsible for more American deaths than any other terrorist group. (GE 12)

## **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial common sense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline B (foreign influence), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup>

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## Analysis

### Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant’s sisters are citizens and residents of Lebanon. Applicant has visited with his sisters regularly, including four times within the past 14 months. He also maintains regular telephone contact with them.

His wife is a citizen of Lebanon and her father is a citizen and resident of Lebanon. She resided in Lebanon until May 2007, when she married Applicant and moved to Qatar to reside with him. Applicant and his wife returned to Lebanon in April 2008, so she could give birth to their child with the medical assistance of a physician with whom she was comfortable. Applicant’s wife maintains regular telephonic contact with her father and she and Applicant returned to Lebanon two months ago to celebrate their son’s first birthday.

Applicant’s relationship with his sisters, and his relationship with his father-in-law through his wife, create security concerns under Disqualifying Condition (DC) 7(a): *contact with a foreign family member . . . 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 DC 7(d): *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*.

I have considered the possible application of Mitigating Condition (MC) 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 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.*;

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<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

and MC 8 (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 of exploitation.* Having done so, I conclude the continuing unrest in Lebanon caused by the terrorist organizations that operate therein along with Applicant's and his wife's relationship with his sisters and her father, including frequent phone calls to and visits with them in Lebanon, preclude application of these mitigating conditions.

I have also considered the possible application of MC 8(b): *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . 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.* There is no reason to question or doubt Applicant's allegiance and loyalty to the United States to the exclusion of all other countries. However, he maintains close ties with his sisters. His wife maintains close ties with her father, and, except for being married to Applicant, she has no ties to the United States. Additionally, there is insufficient evidence to conclude how Applicant would resolve any conflict of interest were it to arise. Accordingly, I conclude this mitigating condition does not apply. The remaining mitigating conditions have no applicability to the facts of this case.

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." In this case, there is no reason to doubt that Applicant is a loyal American citizen or suspect he would consider doing harm to the interests of the United States. Still, his sisters' and father-in-law's Lebanese citizenship and their Lebanese residency create a security concern that has not been overcome.

The objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has failed to mitigate the foreign influence security concern that exists in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline B is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **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



Subparagraph 1.a:                      Against Applicant

Subparagraph 1.b:                      For Applicant

Subparagraph 1,c & 1.d:              Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro  
Administrative Judge

