



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



In the matter of:

ISCR Case No. 07-08344

Applicant for Security Clearance

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel

For Applicant: *Pro Se*

April 22, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by her foreign preference and foreign influence. Eligibility for access to classified information is granted.

On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C, Foreign Preference and Guideline B, Foreign Influence. 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 in writing on January 17, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on February 19, 2008. DOHA issued a Notice of Hearing on February 26, 2008, and I convened the hearing as scheduled on March 18, 2008. The government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on her own behalf,

and submitted Exhibits (AE) A through D, which were received without objection. DOHA received the transcript of the hearing (Tr.) on March 28, 2008.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Lebanon and Jordan. Applicant did not object. The request and the attached documents were not admitted into evidence but were included in the record as HE I through XXII. The facts administratively noticed are set out in the Findings of Fact, below.

Motion to Amend SOR

Department Counsel submitted a motion to amend the SOR by changing “Lebanon” and “Lebanese” in SOR ¶ 1.a to “Jordan” and “Jordanian.” Applicant did not object and the motion was granted. The motion and Applicant’s response were marked HE XXIII and XXIV.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. She was born in the United States of a Jordanian father and a Lebanese mother while her father was attending an American university. Her parents took her to Lebanon in 1975, where she lived until 1976. She lived in Saudi Arabia with her parents from 1976 to 1991. She returned to the United States in 1991, before she turned 17, to attend college. She graduated in four years with a bachelor’s degree. She went to Lebanon in 1995 to attend graduate school, and obtained a master’s degree. She returned to the United States in 1999, and has lived here since her return. She has never been married and has no children.¹

Applicant obtained a Jordanian passport in 1990, when she was 15 years old, in order to visit her grandmother in Lebanon. At the time there were travel restrictions for U.S. citizens. The passport expired in 1995, but was renewed to 2000. Applicant never used the passport to travel to Lebanon, or any other country. The passport has not been renewed since it expired in 2000. Applicant never lived in Jordan. She never truly felt like she was a Jordanian citizen, but she acknowledged that her acquiring the passport was an exercise of Jordanian citizenship. She testified that she would be willing to relinquish her Jordanian citizenship.²

Applicant’s father is a citizen of Jordan and her mother is a citizen of Lebanon. They both are U.S. permanent residents. Her parents own a house in Jordan and they have a condominium and an apartment in Lebanon. They may also have commercial property in Jordan. Her parents split their time between Lebanon, Jordan, and the

¹ Tr. at 27-30, 39-44, 47, 66; GE 1-4.

² Tr. at 27-33, 64-66, 84-86; GE 1-4.

United States. She estimates they spend on average about two months per year in Lebanon, six months in Jordan, and the rest of the year in the U.S. Her father is 67 years old and her mother is 66 years old. Her father is a physician. Her mother was a teacher. They are both retired.³

Applicant has three sisters and a brother. Her oldest sister was born in Saudi Arabia when her father was working there. She became a U.S. citizen in 2002. Her husband is also a U.S. citizen. She has lived in the U.S. for about 11 years. They have children who are U.S. citizens. Applicant's second oldest sister married a citizen of the United Kingdom, and she became a U.K. citizen. They currently live in Kuwait. He is a college professor. They have a child who is a U.K. citizen. Applicant's younger brother is a citizen and resident of Jordan. He attended college in the United States and returned to Jordan after he graduated. He is employed in a commercial industry. Her youngest sister is also a citizen and resident of Jordan. She was working for a private company. Applicant is unsure if her sister is still working for the same company. Applicant maintains periodic telephone contact with two aunts in Lebanon. None of Applicant's family members have any direct connection to a foreign government or to any terrorist organization. Applicant sponsored her family for permanent residence status in the U.S. She hopes that they become U.S. citizens but the process has taken longer than anticipated.⁴

Applicant visited her parents in Saudi Arabia in 1999. She visited Lebanon in 2000, and Lebanon and Jordan in July to August 2001. She visited the U.K. in 2002. Applicant visited Canada in 2006. She had a clearance at the time and fully reported her travel to her security officer. She has not returned to any Middle Eastern country since September 11, 2001.⁵

Applicant worked for a foreign embassy in the U.S. from about 2000 to 2004. It is not one of the countries already discussed in this decision. Her job was to assist citizens of that country who were students in the United States. As an Arabic speaker who attended college in the United States, Applicant shared some common experiences with the students. She had no dealings with the Ambassador. There are no indications that Applicant had any dealings with this country before or after she worked at the embassy. Her current job heavily relies on her ability to speak Arabic. She maintained an interim clearance without incident until it was withdrawn. Her job is contingent upon her obtaining a clearance. Applicant plans on remaining in the United States, but candidly admitted that if she lost her job and could not find another one in the U.S., that she would expand her search overseas. She does not anticipate inheriting any of her parent's property in Lebanon and Jordan because it is customarily passed to a male heir. Applicant estimates the value of her assets in the U.S. at \$110,000. She has no foreign assets.⁶

³ Tr. at 33-36, 41, 80-82, 86-88; Applicant's response to SOR; GE 1-4.

⁴ Tr. at 36-38, 44-54, 68-69; Applicant's response to SOR; GE 1-4.

⁵ Tr. at 53-54; Applicant's response to SOR; GE 1-4.

⁶ Tr. at 56-63, 80-81, 87-88; Applicant's response to SOR; GE 1-4.

Character letters from Applicant's supervisor and co-workers attest that she is a trusted employee and highly regarded colleague. Her science background and language ability proved very valuable in her projects involved in the Global War on Terrorism. They state she is hard-working, conscientious, intelligent, honest, professional, competent, dedicated, diligent, and discrete. She is described as "a lady of great character, integrity and loyalty, and takes great pride in serving and protecting our nation everyday." She is highly recommended for a security clearance.⁷

Lebanon

Lebanon is a parliamentary republic. The U.S. has traditionally had close ties with Lebanon, and it seeks to help preserve Lebanon's independence, sovereignty, national unity, and territorial integrity.

Lebanon does not recognize Israel and has technically been in a state of war with Israel since its establishment. Its foreign policy and internal policies have been heavily influenced by Syria after the entry of Syrian troops into Lebanon in March 1976. Even after the withdrawal of Syrian troops in April 2005, Syria continued to conduct intelligence activities in Lebanon and to exercise a strong influence on Lebanese politics.

Syria, designated by the U.S. as a state sponsor of terrorism, provides political and material support to Hizballah, the most prominent terrorist group in Lebanon. Hizballah has been designated by the U.S. as a foreign terrorist organization, closely connected to Iran and a strong ally of Syria in advancing its political objectives in Lebanon. Hizballah supports numerous violent anti-Western groups and is known to have been involved in numerous anti-U.S. and anti-Israel terrorist attacks. It initiated a military confrontation with Israel in July-August 2006, jeopardizing the long-term stability of Lebanon and complicating U.S.-Lebanese relations as the U.S. strived to support Israel's right of self defense without abandoning its efforts to support rebuilding of democratic institutions in Lebanon. Between 1996 and 2004, Hizballah received financial support from a global criminal enterprise operating in Lebanon, Canada, China, Brazil, Paraguay, and the U.S.

According to the U.S. Department of State Report on Human Rights Practices, Lebanese security forces arbitrarily arrested and detained individuals and there were instances of arbitrary or unlawful deprivation of life, torture, and other abuse. Militias and non-Lebanese forces operating outside the area of central government authority frequently violated citizens' privacy rights. Various factions also used informer networks and monitoring of telephones to obtain information regarding their perceived adversaries. During the year before the conflict broke out, the government took significant steps to increase freedom of assembly and association at mass demonstrations and by facilitating the formation of new political associations and parties. The government also took concrete measures to prevent unauthorized eavesdropping on private citizens.

⁷ AE A-D.

Jordan

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. Jordan has followed a pro-western foreign policy and has had close relations with the U.S. for more than four decades.

The Jordanian government respects human rights in some areas, but its overall record continues to reflect some problems. Problems include: torture, arbitrary arrest, prolonged detention, denial of due process, infringement on citizen's privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement.

Under Jordanian law any male relative may prevent a woman or child from leaving Jordan by placing a hold on their travel with the Jordanian authorities, even if they are U.S. citizens. Jordanian law applies to dual U.S.-Jordanian citizens.

The Jordanian government publicly condemned terrorist acts throughout the world, practiced strict security measures, passed new anti-terror legislation, and disrupted several terrorist plots. Despite Jordan's aggressive pursuit of terrorists, the threat of terrorism remains high in Jordan. Al-Qaida has focused terrorist activities against Jordan and U.S. interests in Jordan. Terrorist organizations have targeted the U.S. for intelligence through human espionage and by other means. International terrorist groups have conducted intelligence operations as effectively as state intelligence services.

Policies

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 over-arching 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 the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. Two are potentially applicable in this case:

(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 but is not limited to:

(1) possession of a current foreign passport;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed a Jordanian passport while a U.S. citizen. The passport expired in 2000. AG ¶ 10(a) was applicable. The possession of the Jordanian passport

while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of her Jordanian citizenship.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant never truly felt like she was a Jordanian citizen, but she acknowledged that she was able to obtain a passport from Jordan because her father was a citizen of Jordan, which amounted to an exercise of Jordanian citizenship. AG ¶ 11(a) does not totally apply because she actively sought recognition of her Jordanian citizenship. AG ¶ 11(b) is applicable because she expressed a willingness to renounce her Jordanian citizenship. Applicant first obtained the passport when she was a minor, but renewed it as an adult. AG ¶ 11(c) is partially applicable. The passport has been expired for eight years and Applicant does not intend to renew it or obtain another one. AG ¶ 11(e) is applicable.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable 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 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; 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's father is a citizen of Jordan. Her mother is a citizen of Lebanon. They both have permanent residence status in the U.S. They are retired professionals and can afford to travel and divide their time between Jordan, Lebanon, and the U.S. She has three sisters and a brother. Her oldest sister is a U.S. citizen, as is her husband and children. She has a sister who is a citizen of the United Kingdom. She, along with her British husband and child currently live in Kuwait. Her younger brother and sister are both citizens and residents of Jordan. Lebanon and Jordan continue to have human rights issues, and they both have been victimized by terrorists. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

Applicant does not own any foreign assets. Her parents have homes and property in both Jordan and Lebanon. Applicant does not anticipate inheriting her parents' property in those countries. The fact that her parents own foreign property is not sufficient to completely raise AG ¶ 7(e), but it clearly is a factor for consideration in this case.

Applicant worked for a foreign embassy in the U.S. from about 2000 to 2004. That could raise AG ¶ 7(b) for consideration. Her job was to assist students and she had very little contact with the diplomatic aspects of the embassy. It has been four years since she worked for the embassy and there are no indications that Applicant had any dealings with this country before or after she worked at the embassy. Her contact with this country through their embassy was merely as an employee who possessed specialized language skills that made her marketable.

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 the United States, but spent a large part of her youth overseas. She returned to the U.S. in 1991, when she was still 16 years old, to attend college. She went to Lebanon in 1995 to attend graduate school. She has lived in the U.S. since 1999. Her parents are permanent residents of the United States, but divide their time between the United States, Jordan, and Lebanon. Her sister and her sister's family are U.S. citizens and residents. I find that Applicant has deep and longstanding relationships and loyalties in the U.S. AG ¶ 8(b) is partially applicable. Applicant has not had contact with the foreign citizens from the embassy where she was employed since she stopped working there in 2004. AG ¶ 8(c) is applicable to her contacts with that embassy. No other mitigating condition is fully applicable.

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) 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 common sense 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 was born in the U.S. Except for one year in Lebanon, she spent much of her youth in Saudi Arabia, where her father was working as a physician. She returned to the U.S. when she was 16 years old to attend college. She attended graduate school in Lebanon, but she has lived in the U.S. since 1999. She worked at a foreign embassy for about four years, using her language skills and experience to assist students from that country who were attending school in the U.S. She has not been in contact with that embassy or its personnel since 2004. She has no loyalty toward this country. She has not traveled to any country in the Middle East since before September 11, 2001. She is very well thought of at her current employment, where her Arabic language skills are highly valued.

I considered the totality of Applicant's family ties to Lebanon and Jordan. Lebanon is a parliamentary republic which traditionally has maintained close ties with the United States. Jordan is a constitutional monarchy which has followed a pro-western foreign policy and has had close relations with the U.S. for more than four decades. 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."⁸ 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 U.S., 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 coercion,

⁸ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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 U.S. Also very important is whether the foreign country is associated with a risk of terrorism.

Both Jordan and Lebanon have human rights issues and have been victimized by terrorism. The influence of Syria and the presence of Hizballah in Lebanon and Al-Qaida in Jordan are serious concerns. However, Applicant has proven that she supports the Global War on Terrorism, in which her language skills and science background have proven to be valuable assets. The Appeal Board has stated that “an applicant’s proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case.”⁹ The Appeal Board case is distinguishable from Applicant’s case as it was discussing an applicant who performed dangerous work as a translator in Afghanistan, which is not what Applicant has done. Nonetheless, Applicant’s work merits special consideration.

Applicant spent much of her youth in Saudi Arabia and attended graduate school in Lebanon, but the last nine years of her adult life have been in the U.S. Her parents spend a few months a year in Lebanon. They spend a longer time in Jordan and her brother and sister live in Jordan, a country where Applicant has never lived. One sister and her family are U.S. citizens and residents. Applicant sponsored her other family members for permanent residence status and looks forward to them becoming U.S. citizens. Her life, career, assets, and allegiance all lie in the U.S. After considering all the evidence, including Applicant’s candid and honest testimony and her valuable and highly regarded work for her current employer, 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 Preference and 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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.f:	For Applicant

⁹ ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).

Conclusion

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

Edward W. Loughran
Administrative Judge