



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



In the matter of:)	
)	
)	ISCR Case No. 07-14399
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

August 13, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant is a Syrian born, naturalized U.S. citizen, who has lived in the United States since 1998. Applicant’s sisters are dual Lebanese and Canadian citizens residing in Lebanon, his brother is a naturalized U.S. citizen residing in Lebanon, and his stepson is a dual U.S and Egyptian citizen living in Egypt. Applicant’s wife and two children are U.S. citizens living in the U.S. He has more connections to the United States than to Lebanon. Applicant has rebutted or mitigated the government’s security concerns under Guideline B, Foreign Influence. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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

Statement of Reasons (SOR) on March 5, 2008, detailing security concerns under Guideline B, Foreign Influence.

On April 4, 2008, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated May 9, 2008. Six documents (Items 1-6) were part of the FORM. Applicant was sent a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response to the FORM was due on June 15, 2008, 30 days after receipt of a copy of the FORM. As of July 7, 2008, no response had been received. On July 7, 2008, I was assigned the case.

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 Egypt. Applicant did not respond to the FORM. The request and the attached documents were not admitted into evidence but were included in the record as Items I–XXIII. Applicant's counsel argued that the facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations, with explanation. Applicant is a 58-year-old linguist working for a defense contractor working with the U.S. Army since December 2005. He is seeking to obtain a security clearance. From January 2006 to January 2007, Applicant worked as a linguist in Iraq. (Item 5) As an Arabic linguist, he works with the joint coalition in one of Saddam Hussein's former palaces in the "green zone" providing information to the U.S. Army and the Iraqi National Police. In February 2007, he was scheduled to return to Iraq for another year. The record is silent as to his return.

Applicant was born in Syria, but was never a citizen of Syria. (Item 5) His parents were citizens of Lebanon and of Lebanese heritage. His father was a dual citizen of Lebanon and Canada. (Item 5) In 1956, when Applicant was six years old, his family moved from Syria to Lebanon. (Item 6) He does not remember being in Syria. Applicant received his high school education and his bachelor's degree in hotel management in Lebanon. During the Lebanese civil war, which lasted from 1975 to 1990, Applicant was living in a Christian area of Beirut and had to cross into a Muslim area to get to his job at the airport. In 1985, he was walking with his wife when attacked. His attackers threatened to beat and behead him. (Item 5) Applicant decided it was time to leave Lebanon. In 1989, he obtained his "green card."

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

In July 1995, he became a U.S. citizen. As a U.S. citizen, Applicant states his loyalty and allegiance are to the U.S. and has no foreign preference. (Items 2 and 5) Applicant and his wife gave up their expired Lebanese passports. They are unable to revoke their Lebanese National Identification cards. The cards identify which directorate or tribal area of Lebanon Applicant came from. Applicant has no obligation to the Lebanese government. (Item 5) He has no financial or business ties outside the U.S.

Applicant's wife was born in Egypt and became a naturalized U.S. citizen in July 1995. In April 1976, Applicant and his wife were married. They have two children born in Lebanon, a daughter born in 1978 and a son born in December 1979. Both became U.S. citizens in July 1995.

Applicant's step-son was born in Egypt in 1970 and educated as a sound engineer in the U.S. His step-son is a dual citizen of Egypt and the U.S. His step-son lives in Egypt, is married, and has two children. In 2006, Applicant and his wife spent two weeks in Egypt visiting his step-son. In 2004, Applicant and his wife visited his step-son in Egypt for one week.

Applicant's brother is a naturalized U.S. citizen living in Lebanon. He received his U.S. citizenship in April 1996 and is married to an Italian. Applicant has contact with his brother every two or three months. Applicant has a sister living in California who became a U.S. citizen in 1999. Applicant has two sisters living in Lebanon who are dual citizens of Lebanon and Canada. He has contact with them every three or four months. One of his sisters was caring for Applicant's elderly parents before they died in 2004. One sister and her husband own a civil engineering business.

When his parents were alive, Applicant periodically traveled to Lebanon to see them. He has not traveled to Lebanon since 2004. He states he has no reason to go to Lebanon. Applicant was unable to attend his parent's funeral because he was in Iraq working as an Arabic linguist for the U.S. Army at the time and travel to Lebanon was prohibited. When his parents were alive, Applicant traveled to Lebanon in 2001, 2003, and 2004.

Lebanon

I take administrative notice of the following facts. Lebanon is a nominal democracy with a less-than-perfect human rights record. It has both a long history of civil war and of foreign influence by Syria. Lebanon is not a state sponsor of terrorism, but is a permissive environment for groups recognized by the U.S. as terrorist organizations, which Lebanon considers "freedom fighters" against Israel. The U.S. State Department continues to maintain a travel warning for U.S. citizens contemplating travel to Lebanon. Lebanon is not known to be a collector of intelligence or economic information against the U.S.

Egypt

I take administrative notice of the following facts. Egypt is a republic with a strong executive. The United States and Egypt enjoy a strong and friendly relationship based on shared mutual interests in Middle East peace and stability, strengthening trade relations, and promoting regional security.² The threat of terrorism in Egypt remains high and transnational terrorist groups and local terrorist groups pose threats in Egypt despite Egypt's aggressive pursuit of terrorists and "Zero tolerance" policy on extremism.³ In 2003, Egypt discovered and disrupted a terrorist plot against U.S. interests.⁴ Between 2004 and 2006, Egypt suffered a series of deadly, coordinated terrorist bombings, which cause many deaths and hundreds of injuries, including U.S. citizens.⁵ "Although the Egyptian government took measures against the perpetrators of the 2004 and 2005 attacks, a 2006 bombing reflects a persistent, indigenous threat of terror activities."⁶

Terrorists use overt, covert, and clandestine activities to exploit and undermine U.S. national security interests. Terrorist organizations currently target the U.S. for intelligence collection through human espionage and other means.⁷ Terrorist groups conduct intelligence activities as effectively as state intelligence services.

The State Department notes the Egypt's human rights record is poor and serious abuses continue in many areas. Problems include: restriction of freedom of speech, press, assembly, and association, denial of fair trial, lack of due process, limitations on the right of citizens to change their government, arbitrary arrest, prolonged detention, poor prison conditions, political prisoners and detainees, torture, as well as executive branch limitation on an independent judiciary. Torture in Egyptian detention centers is pervasive.⁸

Opposition parties continue to lodge credible complaints about election manipulation by the government even though recent elections were more transparent

² U.S. Department of State, *Background Note: Egypt*, March 2008. (Item XIV)

³ U.S. Department of State, *Background Note: Egypt*, March 2008 (Item XVI); U.S. Department of State, *Patterns of Global Terrorism* 2003, April 29, 2004 (Item XVII); and U.S. Department of State, *Appendix B – Background Information of Designated Foreign Terrorist Organizations*, April 29, 2004 (Item XIX)

⁴ U.S. Department of State, *Patterns of Global Terrorism* 2003, April 29, 2004 (Item XVII)

⁵ Department of State, *Country Reports on Terrorism, Chapter 2 – Country Reports: Middle East and North Africa Overview*, April 30, 2007. (Item VII)

⁶ *Id.*

⁷ *Statement for the Record by Michelle Van Cleave from the national Counterintelligence Executive*, Before the House Judiciary Subcommittee on Immigration, Border Security and Claims, Hearing on Sources and Methods of Foreign National Engaged in Economic and Military Espionage. (Item XXI)

⁸ U.S. Department of State, *Country Reports on Human Rights Practices - 2007*, March 2008. (Item EXI)

and better executed than in the past.⁹ There remain significant restrictions on the political process and freedom of expression for non-governmental organizations.¹⁰

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 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 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.

⁹ *Id.*

¹⁰ *Id.*

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. AG ¶ 6

I have considered all of the Foreign Influence disqualifying conditions. Conditions that could raise a security concern and may be disqualifying are listed under AG ¶ 7. AG ¶ 7(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 AG ¶ 7(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,” apply.

In 1985, Applicant moved to the U.S. after having been attacked in Lebanon and threatened with being beaten and beheaded. In 1995, more than 13 years ago, he, his wife and two children became U.S. citizens. He has no foreign assets, investments, financial or business interests in Lebanon.

Applicant’s two sisters reside in Lebanon. They are dual Lebanese and Canadian citizens. He has contact with his sisters three or four times a year by telephone. His brother who is a U.S. citizen resides in Lebanon. He has contact with his brother every two or three months. None of his siblings or their spouses have connections with any foreign government. Because of his job as a linguist with the U.S. Army in Iraq, he was unable to visit Lebanon when his parents died. Applicant last visited Lebanon in 2004. While danger certainly exists for all who reside in Lebanon, his siblings are in no greater danger than any other individual living and working there.

Applicant’s step son is a dual U.S. and Egyptian citizen living in Egypt. Applicant and his wife visited his step-son in Egypt for one week in 2004 and two weeks in 2006. While danger certainly exists for all who reside in Egypt, his step-son is in no greater danger than any other individual living and working there.

¶ 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.” and ¶ 8(b) “there is no conflict of interest, either because the individual’s sense of loyalty or obligations 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,” apply to Applicant’s siblings and step-son.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant stated he is loyal to the U.S. and would do nothing to compromise U.S. interests. His allegiance is exclusively to the U.S. Applicant was born in Syria and moved to Lebanon at age six. In 1985, he left Lebanon and came to the U.S. In 1995, Applicant, his wife, and two children became U.S. citizens, and live in the U.S.

I considered the totality of Applicant’s family ties to Lebanon and Egypt and the heavy burden an applicant carries when he has family members in a foreign country. His sibling’s jobs, that of their spouses’ or his step-son’s job are not connected to any foreign government. His sisters are dual Lebanese and Canadian citizens, his brother is a U.S. citizen, and his step-son is a dual U.S. and Egyptian citizen.

There is little likelihood that Applicant will be placed in a position of having to choose between the interests of the U.S. and a foreign entity. Applicant served a year with the U.S. Army as a linguist in the “green zone” working closely with the U.S. military. As an Arabic linguist working in a combat zone he is a valuable resource to the

Army in helping it achieve its mission in Iraq.¹¹ Because of his close ties and his loyalties to the U.S., including his wife and two children (all U.S. citizens), he would resolve any attempt to exert pressure, coercion, exploitation, duress, or conflict of interest in favor of the U.S.

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 mitigated the foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

 Subparagraph 1.a-1e: For Applicant

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

CLAUDE R. HEINY II
Administrative Judge

¹¹In ISCR Case No. 05-03846 at 6 (App. Bd. Nov.14, 2006), the Appeal Board recognized an exception to the general rule in Guideline B cases when "an applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurs in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security . . . [and therefore he] can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation."