



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



In the matter of:)
)
-----) ISCR Case No. 07-16381
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
James W. Green, Esquire
Lance R. Claery, Esquire
Edmunds & Claery, LLP

January 30, 2009

Decision

ROSS, Wilford H., Administrative Judge:

The Applicant submitted his Security Clearance Application (SF 86), on August 2, 2005 (Government Exhibit 1). On April 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guidelines C, B, F and E stating why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant answered the SOR in writing on May 8, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on June 4, 2008. This case was assigned to me on June 6, 2008. DOHA issued a notice of hearing on July 10, 2008, and I convened the hearing as scheduled on August 14, 2008. The Government offered Government Exhibits 1 through 9, which were received without objection. The Applicant testified on his own and submitted Applicant's Exhibits A through T, also without objection. The record was left open at the Applicant's request for the submission of additional documentation. The Applicant submitted Applicant's Exhibits U through AA on August 21, 2008, and August 27, 2008. These exhibits were also received without objection. DOHA received the transcript of the hearing on August 25, 2008. The record closed on August 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Lebanese Republic (Lebanon). (Transcript at 18-20.) The request and the allied documents were not admitted into evidence, but are included in the record. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

The Applicant is 51 and married. He is employed by a Defense contractor and seeks a security clearance in connection with his employment in the defense industry. In his Answers to the SOR, Applicant denied all of the allegations in the Statement of Reasons.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in Paragraph 1 that the Applicant is ineligible for clearance because he has acted in such a way that shows a preference for a foreign country over the United States.

The Applicant had and used a Lebanese passport to travel to Lebanon after he became an American citizen. (Applicant's Exhibit X.) This passport has been

surrendered to his company's security office. (Applicant's Exhibit I.) The Applicant also has a valid United States passport. (Applicant's Exhibit U.)

The passports show that the Applicant used both of them to enter and leave Lebanon. He and his family travel to Lebanon every two or three years to visit family members. During his last trip, in 2007 and 2008, he used his Lebanese passport to enter Lebanon and his American passport to leave. The Applicant testified that he retained the Lebanese passport to ease his entry into Lebanon, because he would not have to obtain a Lebanese visa. He further stated that he would only use his United States passport in the future. (Transcript at 31-32, 68-70.)

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in Paragraph 2 that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

The Applicant was born in Lebanon in 1957. In addition to his parents, he has one brother. The Applicant came to the United States in 1979 to continue his education. He received his Bachelor's Degree in 1987. (Government Exhibit 1.) He has had a successful business career in the United States. Currently his net worth is about \$100,000.00. (Transcript at 70-73.)

He became an American citizen on May 23, 1986. (Applicant's Exhibit V.) He said the following regarding his conduct if forced to choose between Lebanon and the United States: "I would put the interests of the United States first because, like I said, the United States gave me everything I have right now. That's true I was born in Lebanon and - - but I live here, I get my education over here, I have my future here. I love this country and it's my plan - - I would never, ever do anything to harm this country." (Transcript at 36-37.) He stated firmly that he would not respond to any request for information and would notify his company's security department if approached. (Transcript at 31.)

The Applicant married his Lebanese born wife on October 14, 2002. She is a resident alien here in the United States. The Applicant testified that his wife applied for American citizenship in 2008. Her mother also lives in Lebanon. (Transcript at 26-27.) As stated earlier, the Applicant's parents and brother continue to live in Lebanon, specifically in the Bekaa Valley. Applicant and his wife have fairly frequent contact with their families in Lebanon, speaking to them about weekly. The Applicant send between \$1,000.00 and \$1,400.00 a month to both families in Lebanon. Finally, the Applicant stated several times that he loves his parents a great deal, and that they are more important to him than Lebanon. (Transcript at 73-39.)

In an interview in 2007, the investigator wrote that the Applicant indicated or stated, "There is no conflict between Lebanon and the United States. [The Applicant's] loyalty lies with the U.S. His degree of loyalty to Lebanon is 20-30 percent."

(Government Exhibit 2 at 2.) The Applicant denied using a percentage during the interview. He did indicate that he had loyalty to his relatives, but not to Lebanon itself. He further stated, "I have everything I need in life here. Why would I want to jeopardize that and have loyalty to a different country. I mean, I have loyalty to my family, but not to the country itself." (Transcript at 81.)

The Applicant has contacts with Lebanon. Accordingly, it is appropriate to discuss the relationship between Lebanon and the United States at this time.¹ I take administrative notice of the following adjudicative facts about Lebanon. Lebanon is a parliamentary republic that became independent in November 1943. The U.S. policy is to maintain its traditionally close ties with Lebanon and to help preserve its independence, sovereignty, national unity, and territorial integrity. Since its independence, Lebanon's national policy has been determined by a small group of regional and sectarian leaders. Political institutions often play a secondary role to religion and personality-based politics. Lebanon has been in a state of war with Israel since 1973. Civil war broke out in April 1975 and did not end until 1991. Since 1992, Lebanon has experienced social and political instability, economic uncertainty, lack of infrastructure, violent clashes with Israeli forces, and political assassinations.

I also take administrative notice that Lebanon's foreign policy and internal policies are heavily influenced by Syria, which maintains intelligence agents in Lebanon and is a state sponsor of terrorism. The unstable political situation in Lebanon enables foreign terrorist organizations to operate within its borders. Hezbollah is the most prominent terrorist group in Lebanon, and it has been designated by the U.S. Department of State as a "Foreign Terrorist Organization." The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. Hezbollah maintains offices in Beirut and elsewhere in Lebanon, is closely allied with Iran, supports a variety of violent anti-Western groups, and has been involved in numerous anti-U.S. terrorist attacks. Hezbollah seeks to obtain U.S. technology, has been involved in several efforts to obtain restricted, dual-use technology, and is considered by the U.S. to be the most technically capable terrorist group in the world. A center for Hezbollah and Syrian activity is the Bekaa Valley.

Finally, I take administrative notice that Lebanon has a poor human rights record and has been ineffective in controlling terrorism and political violence. Lebanese security forces have engaged in arbitrary arrest, murder, torture, and other abuses. There is an atmosphere of governmental corruption and lack of transparency. Militias and non-Lebanese forces operating outside the area of Lebanese central government authority have used informers and monitored telephones to obtain information about their perceived adversaries. Ongoing political violence and terrorism directed at Americans and U.S. interests make Lebanon dangerous for U.S. citizens.

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice. (Administrative Notice Documents I through X.)

Guideline F - Financial Considerations

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of engaging in illegal acts to obtain funds.

The Applicant testified that a year long period of unemployment between 2002 and 2003 left him unable to pay his debts. He has since resolved two of the three debts alleged in the SOR, as well as paying off other debts. (Applicant's Exhibits K, L and M.)

The Applicant was indebted to American Express in the approximate amount of \$827.00 (SOR 2.a.). This debt was paid in June 2008. (Transcript at 37; Applicant's Exhibit J.)

The Applicant was in a dispute with LVNV Funding as to a debt in the approximate amount of \$6,839.00 for Bank of America (SOR 2.b.). The Applicant has consistently stated that this debt was the result of a "friend" using the Applicant's credit card without his knowledge and buying equipment for the friend's business. The Applicant has resolved the debt and paid \$2,572.00 in settlement. (Transcript at 37-40, 52- 64; Applicant's Exhibit Z.)

The Applicant cannot admit or deny that he owes a medical debt of approximately \$395.00 (SOR 2.c.). He has been unable to find any information on this debt because none of the available credit reports provide any contact information as to the creditor or a collection agency. (Transcript at 43-44, 50-52; Government Exhibits 6, 7, 8 and 9; Applicant's Exhibits R, S and T.)

Guideline E - Personal Conduct

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process.

In 2005, the Applicant filled out a Security Clearance Application in which he stated that he was over 180 days delinquent on the debt set forth in allegation 2.b., above. That was true. He also remarked that his loss of employment and wife's health problems created a financial hardship and he was unable to maintain payments on this debt. That was also true. (Government Exhibit 1 at question 38.)

The Applicant filled out an Interrogatory in January 2008. In this document, he stated that the debt in 2.b. was the result of fraud and that he was having it investigated. (Government Exhibit 3 at 3, 9.)

The Government's credit reports show that, beginning in March 2002, the Applicant notified the credit agencies that he was a credit fraud victim. (Government Exhibit 6 at 1 and Government Exhibit 7 at 1.)

The Applicant testified at length about this debt, how it was incurred, why he began paying it, and why he stopped. He was cross-examined extensively on this point. His version of events is credible and believable. (Transcript at 40-43, 52-68.) In essence, a friend defrauded the Applicant and, after it was discovered, told the Applicant that he would pay the debt. This person failed to do it. The Applicant, in a misguided attempt to preserve his credit, made payments on the account rather than report it as a fraud. The Applicant eventually attempted to inform the creditor of the fraud, but the creditor informed him that, having made some payments on the account, the Applicant was now legally responsible for it.

While his decisions may not have been those of a trained attorney, they are not on their face unreasonable. In addition, his answer on the Security Clearance Application was true, if somewhat incomplete. Under the particular facts of this case, I do not find that his answers were false, or that they were intended to mislead the Government in any way. This paragraph is found for the Applicant as the Government has failed to show that any falsehood was made.

Mitigation

The Applicant is a highly respected person in his field. He presented recommendations from co-workers and supervisors that are very laudatory. The letters describe the Applicant as “trustworthy, dependable and compassionate,” “honest, loyal,” and “straight forward.” All of these people recommend the Applicant for a position of trust. (Transcript at 46-49; Applicant’s Exhibits A through H.)

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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant had a valid Lebanese passport that he used for travel (Guideline C), that he has family members in Lebanon (Guideline B), and that he had financial difficulties (Guideline F). The Government did not meet its burden in showing that the Applicant made false statements in the clearance screening process (Guideline

E.) The Applicant, on the other hand, has not successfully mitigated the Government's case, except in part.

Paragraph 1 (Guideline C - Foreign Preference)

Turning first to Guideline C, the Applicant has mitigated the Government's concerns about his possession and use of his Lebanese passport after becoming an American citizen. The concern is stated thus under this Guideline, *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 Applicant had a valid Lebanese passport after becoming an American citizen. Accordingly, Disqualifying Condition 10(a)(1) applies to the facts of this case: *Conditions that could raise a security concern and may be disqualifying include: (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.*

The Applicant has surrendered his passport to his company's facility security officer. Accordingly, as required by Mitigating Condition 11(e) his Lebanese passport has *been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.*

I have considered the Applicant's using his Lebanese passport to travel to Lebanon after becoming an American citizen. As stated above, he would use both passports to travel, and has indicated a credible intent to only use his American passport in the future. Paragraph 1 is found for the Applicant.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows:

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 Applicant and his wife live in the United States. They have friends and investments here. His net worth is about \$100,000.00.

Both of them, however, have connections to family in Lebanon. As described above, his parents, her mother, as well as siblings still live in Lebanon. By his own words, the Applicant stated that he has strong feelings for his family in Lebanon. This is shown by his repeated trips to Lebanon, five since 2000. The last trip, as described above, took place in December 2007-January 2008. It is also shown by his sending substantial sums of money, approximately \$12,000.00 a year, to Lebanon.

All of these connections must also be viewed in the context of the situation in Lebanon, and in particular Hezbollah's history of attempting to obtain classified and other information from Americans and American companies. To his credit, the Applicant repeatedly stated that he is a loyal American citizen, that he understands his responsibilities as a security clearance holder, and that he would not be a party to any attempt by anyone in Lebanon to obtain information from him. However, given the depth and extent of his connections with Lebanon, he has failed to meet his burden of showing an unequivocal connection to the United States.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case: 7.(a) *Contact with a foreign family member . . . 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 . . . 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 . . . by providing that information;* and (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 also considered the information concerning the situation in Lebanon, provided by Department Counsel in their administrative notice documents.

The Applicant has not provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: 7(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.* Paragraph 2 is found against the Applicant.

Paragraph 3 (Guideline F - Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), *an inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly under AG ¶ 19(c), *a history of not meeting financial obligations* may raise security concerns. The Applicant failed to pay several of his debts for a period of years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(b), the disqualifying conditions may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . .), and the individual acted responsibly under the circumstances*. The Applicant was laid off between 2002 and 2003. The Applicant has paid off all of his debts but one, and on that one he is unable to find sufficient information to allow him to make a payment. The evidence raises this potentially mitigating condition.

Evidence that *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* is also mitigating under ¶ 20(d). The Applicant successfully showed that he has successfully paid off two of the three debts alleged in the SOR, in addition to resolving other debts. I conclude this potentially mitigating condition applies.

Finally, ¶ 20(e) states that it may be mitigating where *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*. As set forth at length above, the Applicant had a legitimate dispute with concerning the debt in 2.b. In order to resolve this issue, he accepted a settlement and paid this debt. This mitigating condition clearly applies to the facts of this case. For all the foregoing reasons, Paragraph 3 is found for the Applicant.

Paragraph 4 (Personal Conduct)

The Government failed to show that the Applicant made any false statements. This Paragraph is found for the Applicant.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

This is a close case. The Applicant is an able, intelligent and respected member of the Defense industry. He is obviously a loyal American citizen. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, in particular his connections to Lebanon. Two of the factors have the most impact on this case. First, I cannot find that there is the "presence or absence of rehabilitation and other permanent behavioral changes," as set forth under AG ¶ 2(a)(6). The Applicant simply has not proved that he has sufficient connections in this country, as opposed to those in Lebanon, which shows a preference for the United States instead of Lebanon. In addition, given the terrorist situation in Lebanon, it is not possible for me to find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8) given his particular circumstances.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 2 of the Government's Statement of Reasons. As stated above, Paragraphs 1, 3 and 4 are found for the Applicant.

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 THE APPLICANT
Subparagraph 1.a.:	For the Applicant
Subparagraph 1.b.:	For the Applicant
Subparagraph 1.c.:	For the Applicant

Paragraph 2, Guideline B:	AGAINST THE APPLICANT
Subparagraph 2.a.:	Against the Applicant
Subparagraph 2.b.:	Against the Applicant
Subparagraph 2.c.:	Against the Applicant
Subparagraph 2.d.:	Against the Applicant
Subparagraph 2.e.:	Against the Applicant
Paragraph 3, Guideline F:	FOR THE APPLICANT
Subparagraph 3.a.:	For the Applicant
Subparagraph 3.b.:	For the Applicant
Subparagraph 3.c.:	For the Applicant
Paragraph 4, Guideline E:	FOR THE APPLICANT
Subparagraph 4.a.:	For the Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge