



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| SSN:                             | ) | ISCR Case No. 07-17388 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government, James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro se*

January 12, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on June 20, 2006. On June 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's answer to the SOR is dated July 16, 2008. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility for security clearance access is granted. At the hearing, the government submitted three exhibits (GE 1-3). Testimony was taken from Applicant. I took administrative notice of several publications

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from United States Government agencies that describe the governments of Lebanon and the United Arab Emirates (UAE), and their human rights record internally. The publications also address the governments' practices regarding the collection of protected information from other countries and their association with internal and external terrorist activities. DOHA received the transcript on November 6, 2008.

### **Findings of Fact**

Applicant admitted all five factual allegations listed under the foreign influence guideline of the SOR. Applicant is 35 years old and married with three children. He has worked as a senior program engineer for his employer (a defense contractor) since April 2006. He seeks a secret security clearance. This is the first time Applicant has applied for a security clearance.

Applicant was born in Lebanon in August 1973. In 1987, Applicant's father, a math teacher in Lebanon, took a teaching job at an international high school headquartered in the UAE (Tr. 16, 18). After approximately three months in the same year, Applicant's father moved the entire family (Applicant, his mother, and two sisters) to the UAE and away from the religious and cultural discord present in Lebanon. Over the next three years, Applicant completed high school at the international school in the UAE. In 1990, he decided to enroll in additional high school education. With no additional high school education available in the UAE international school campus, Applicant transferred to the English campus of his school. (Tr. 18).

After receiving his high school degree in late 1991, Applicant came to the U.S. to pursue additional education. He enrolled in a technical university in December 1992. In December 1995, he received his Bachelor's Degree in Electrical Engineering. In December 1997, he was awarded a Master's Degree in Electrical Engineering. While he was attending the technical institute, he participated in the cooperative work/study program at the research branch of the school.

After completing his education in December 1997, Applicant was employed as manager of a signal processing technologies company from January 1998 to February 2004. Next, he was employed as a software engineer for two years before being hired as senior program engineer by his current employer in April 2006.

In July 1998, Applicant married his girlfriend, who was born in the U.S. in December 1972. She has never lived or worked in a foreign country (Tr. 40). Applicant became a U.S. citizen in June 2005, and obtained his U.S. passport in September 2005 (GE 1, 2). He has no intention of renewing his expired foreign passport.

Applicant's mother was born in Lebanon (SOR 1.a) in February 1948. She moved to the UAE in 1987 with the rest of the immediate family to live. She continued her teaching career in the new location, and at the same school as Applicant's father.

Also, Applicant's mother and father have lived on the UAE school campus since 1987. Both Applicant's mother and father obtained their permanent U.S. resident status in about July 2008, and will move to the U.S; they have no intention of returning to Lebanon (Tr. 23, 45). They remain in the UAE for employment reasons (Tr. 26), and will qualify for a pension through the UAE pension system, not Lebanon (Tr. 42).

Applicant's mother has no close friends in Lebanon. She contacts her one sister and five brothers (Lebanese resident citizens) a few times a year, and visits them on occasion (Tr. 42-44, 52-53). Applicant's mother provides her siblings no monetary support. Her parents are deceased. Applicant's mother has no political contacts in Lebanon or the UAE.

Applicant's father was born in Lebanon (SOR 1.b) in January 1942. As noted earlier, he continued his teaching career in the UAE to get his family away from the civil strife in Lebanon. Applicant hopes his parents will retire to the U.S. in two to three years so they can enjoy their grandchildren (Tr. 31). Applicant is uncertain whether his father was required to serve in the Lebanese military, but he is sure his father never worked for the Lebanese government (Tr. 47).

Applicant is very close to his parents. They contact each other by phone about once a week, and exchange e-mails on occasion (Tr. 48-50). His parents may have contact with Applicant's sisters on a daily basis. Applicant provides no support to his parents. Applicant's parents have never had any contact with any extremist organizations like Hizballah (Tr. 48).

Applicant's oldest sister was born in Lebanon (SOR 1.c) in October 1977. She moved with the rest of the family in 1987 to UAE. She is now a permanent resident citizen (H1-B visa), and lives in the western part of the U.S. (GE 2). She has an industrial engineering degree, and is married (Tr. 17) Applicant talks to her by telephone a several times a week, and may visit her a few times a year.

Applicant's youngest sister was born in Lebanon (SOR 1.c) in August 1984, and spent three years in the country before moving permanently to the UAE with the family. At the present time, she lives about 20 minutes from Applicant and attends a technical school on a student visa (Tr. 16). She completed her industrial engineering degree, and is now studying for a business administration degree (Tr. 17). Applicant wants his youngest sister to obtain her permanent visa, but is aware she may not meet the residency requirements. She applied for resident alien status through the lottery, but was not successful (Tr. 49). Applicant's mother recently applied for permanent residence in his younger sister's behalf (Tr. 50).

Applicant's grandmother, about 85 years old, lost her husband (Appellant's grandfather) three years ago (Tr. 28). She is a resident citizen of Lebanon (SOR 1.d) with no political affiliation. She receives no pension from the Lebanese government (Tr.

51). Applicant's father regularly supports her (Tr. 28). Applicant communicates with his grandmother and aunt between one and three times a year (Tr. 51). Like Applicant's grandmother, none of his aunts and uncles have ever worked for the Lebanese government (Tr. 52-53).

Applicant's aunt and two uncles (on his father's side) are resident citizens of Lebanon (SOR 1.e). One uncle works for a pharmaceutical company, the other uncle is employed by a water bottling company, and the aunt is unemployed (Tr. 52-53).

Applicant's mother has one sister and five brothers. The sister is a part-time school teacher, one brother is a contractor, one is a dentist, one is retired from employment with a regional airlines, one does some kind of work for a municipality, and the fifth brother may already be retired (Tr. 53-56).

Applicant has never exercised a privilege of foreign citizenship, including voting in a foreign election, engaging in foreign political activity, paying foreign taxes, and working for a foreign government (Tr. 38). See *also*, GE 1. Applicant does not believe his association with foreign family members and a possession of a foreign passport could be used to blackmail or influence him (GE 2). Applicant has no intentions of renewing his Lebanese passport (Tr. 39).

Regarding Applicant's financial interests, his only financial interests are in the U.S. (GE1; Tr. 59). He has no property in Lebanon or the UAE (Tr. 56). Applicant recalled his grandfather on his father's side may have owned some real estate, but Applicant was not certain who inherited the property (Tr. 55). Applicant owns his home and considers it to worth about \$400,000.00. He has investments, e.g., stocks and mutual funds, to be valued at about \$170,000.00; he has a one-third interest in a condominium to be worth about \$166,00.00 (Tr. 56-58).

### **Administrative Notice**

Lebanon, a parliamentary democracy, and the U.S. have had long standing, friendly ties. The country is 95% Arab, with a population of mostly Muslim sects, Christian groups, Druze, and other political groups. One of the groups that have a fairly large presence in the country is Hizballah, a terrorist organization. Hizballah gets its power and influence from Lebanon's Shi'a sect, and has offices throughout the country and elected deputies in Lebanon's Parliament.

Syria withdrew its military forces from Lebanon in April 2006. However, Syria still has an intelligence network in the country that provides support and weapons to Hizballah and other terrorist organizations in southern Lebanon for use in attacks on Israel, keeping the region in a constant state of instability.

The United Arab Emirates (UAE) is a federation of individually ruled emirates. The government is a federal republic with a president and a council of ministers. The U.S. and UAE have enjoyed compatible relations since 1971. The relationship drew closer during the Iraqi incursion into Kuwait in 1991. The UAE is a reliable partner in the regional and global war on terror.

The low number of human rights problems in the UAE is attributed to the lack of elections and certain restrictions on civil liberties. However, while there are no democratically elected political parties, UAE citizens are allowed to air their concerns to UAE leaders in council-type meetings. Although the law prevents freedom of assembly, modest demonstrations on working conditions have been permitted. Arbitrary arrests are prohibited, but reports have disclosed that the government has held people without formally charging them.

## **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 flexible rules of law that recognize the complexities of human behavior, and are to be applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. 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 is not restricted to normal duty hours. Rather, the relationship is an around-the-clock responsibility between an applicant and the federal government. 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.

## **Analysis**

### **Foreign Influence**

6. *The Concern.* “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” ¶ 6.

The mere possession of family ties in a foreign country is not automatically disqualifying under the FI guideline. ISCR Case No. 98-0507 (App. Bd. Dec. and Rem. Ord., May 17, 1999) at 10. However, the citizenship/residence status of Applicant’s mother, father, two sisters, grandmother, aunt and two uncles, potentially creates “a heightened risk of foreign influence” as set forth in Foreign Influence (FI) disqualifying condition (DC) 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*).

To determine whether Applicant faces a heightened risk of foreign influence due to the citizenship/residence of his foreign family members depends a number of factors other than the citizenship and residence of family members, including the political character of the foreign country in question, its relationship to the U.S., and the prospects an applicant’s family members may be subject to pressure or coercion. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). If the foreign family member is associated/employed or dependent on the government, or the government is authoritarian, then the chances for foreign influence directed to and through the foreign family member are more likely. Even friendly nations like Lebanon and the UAE do not always have the same interests as the U.S. Neither Lebanon nor the UAE are collectors

of foreign intelligence. On the other hand, the terrorist organization Hizballah continues to use Lebanon as a base of operations for engaging in terrorist activities to destabilize the middle eastern region. But there is no indication Hizballah uses terrorism to collect intelligence from foreign sources.

Applicant's mother is 60 years old, and has been a teacher for about 2/3 of her life. She is a citizen of Lebanon where she began her teaching career over 40 years ago. In 1987, she moved with the rest of the family to the UAE, allowing her to continue teaching at the same campus location as Applicant's father. There is no evidence her teaching position is administered by the Lebanese or UAE governments, or that she is an agent of either government. Applicant's mother has her permanent U.S. residence card and plans to move to this country with Applicant's father in two or three years.

Applicant's father was born in Lebanon in January 1942. In 1987, he took the teaching job in the UAE because the move provided a valuable opportunity for the entire family to escape Lebanon. Neither Applicant's father nor his mother has any intentions of returning to Lebanon. Applicant's father, like Applicant's mother, has spent his entire life teaching. There is no evidence he has ever been employed by the Lebanese or UAE governments or is an agent of either government.

Applicant's oldest sister was born in Lebanon in October 1977. She moved to UAE ten years later with the rest of the family. She received her industrial engineering degree in the U.S. She is now a married, permanent U.S. resident citizen living in the western part of the U.S. She intends to obtain American citizenship.

Applicant's youngest sister was born in Lebanon in August 1984. She joined the rest of family in the UAE in 1987. She is currently in the U.S on a student visa attending a local technical university, and lives a short distance away from Applicant. While she recently was not selected for resident alien status, Applicant's mother sponsored for permanent residency in the U.S.

Applicant's grandmother is a resident citizen of Lebanon with no political affiliation. Applicant's father provides regular support for her. She gets no pension from the Lebanese government. She currently lives with Applicant's aunt. Though there is a risk that pressure could be placed on and through Applicant's father due to his regular support of Applicant's mother, the strong ties Applicant has developed in this country will successfully enable him to resist and report any pressures from foreign sources. Further, Applicant's contact with his grandmother and his aunt is less that three times a year, not a security concern under the foreign influence guideline.

Applicant's aunt and uncle on his father's side of the family have never worked for the Lebanese government. His aunt is unemployed. One uncle works for a pharmaceutical company while the other is employed by a water bottling company.

Applicant's aunt on his mother's side of the family is a part-time school teacher. Neither Applicant's aunt nor her five brothers have ever worked for the government of Lebanon. The contacts Applicant has with his aunts and uncles on both sides of his family are infrequent and not a security concern.

Security concerns under the foreign influence guideline may be mitigated by FC MC 8.a. (*the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.*). Applicant's mother, father, and two sisters are no longer living in Lebanon. The sporadic number of contacts Applicant has with his grandmother, aunts, and uncles (on both sides of his family) removes these individuals as source of foreign influence under FC MC 8.a.

FI MC 8.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 minimal, or the individual has such deep and long lasting 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*) also applies to show there is no conflict of interest between Applicant, his foreign family members and the U.S. Applicant has built a growing relationship in the U.S. that convinces me he can be expected to resolve any conflict of interest in favor of the U.S. Applicant's credible testimony demonstrated that he is a loyal U.S. citizen. He has been in this country since 1992. He has been married since 1998, and currently has three children born in the U.S. He has been employed as a senior program engineer by his employer since April 2006. Applicant has successfully mitigated all disqualifying conditions under the foreign influence guideline.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FI guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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.

I have considered the potentially disqualifying and mitigating conditions in light of all the evidence surrounding the case. Applicant is a responsible and well-educated, 35-



year-old individual who has dramatically increased his bonds to this country since arriving here in 1992. On his arrival, he began the course curriculum for an electrical engineering degree. In December 1995, he received a Bachelor's degree in Electrical Engineering. In December 1997, he received a Master's degree in Electrical Engineering.

In 1998, Applicant married his wife, a U.S. citizen. The couple has three children who were born in the U.S. Applicant received his U.S. citizenship in June 2005, and began working for his current employer in April 2006. Applicant owns a home worth about \$400,000.00. He has investments valued at about \$170,000.00. His summer home that he owns with two other couples is worth about \$166,000.00.

Though the risk of coercion or influence can never be completely ruled out, it is unlikely that Applicant will be placed in a position of having to choose between the interests of those remaining family members in Lebanon and interests of the U.S. Regarding the UAE, given their friendly ties to the U.S. since 1971, together with the partnerships the two countries have established to fight the regional and global war on terror, the chances of pressure and/or coercion being placed on Applicant's parents to reach Applicant are dramatically minimized. Accordingly, Applicant has mitigated the security concerns arising from foreign influence.

### **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 (Foreign Influence, Guideline B): | FOR APPLICANT |
| Subparagraph 1.a.                             | For Applicant |
| Subparagraph 1.b.                             | For Applicant |
| Subparagraph 1.c.                             | For Applicant |
| Subparagraph 1.d.                             | For Applicant |
| Subparagraph 1.e.                             | For Applicant |

### **Conclusion**

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

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Paul J. Mason  
Administrative Judge

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