



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



In the matter of:)) -----) SSN: -----)) Applicant for Security Clearance)	ISCR Case No. 08-03029
--	------------------------

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

June 8, 2009

Decision

HOWE, Philip S., Administrative Judge:

On September 25, 2003, Applicant submitted his Security Clearance Application (SF 86). He submitted a second SF-86 on December 29, 2004. On December 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence)¹. 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.

¹ The Government moved to amend the SOR to substitute “Guideline C” in Paragraph 1 instead of “Guideline B” on page 9 of the File of Relevant Material. Yet the Government’s entire discussion in the File of Relevant Material is based on Guideline B conditions under the Directive. Therefore, I consider this case under Guideline B only, and the motion is denied.

Applicant answered the SOR in writing on January 15, 2009. He requested his case be decided on the written record in lieu of a hearing.

On March 23, 2009, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on March 30, 2009. Applicant did not file a response to the FORM within the 30 day time allowed that would have expired on April 30, 2009. I received the case assignment on May 15, 2009.² Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel requested administrative notice of certain facts relating to Lebanon. (FORM at 3) The request and the attached documents are included in the record as a series of pages not numbered or lettered but in the FORM after Item 7. Applicant did not object to consideration of those exhibits. Hence, the facts administratively noticed are 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, dated January 15, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.f of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.g and 1.h of the SOR alleging possession of bank accounts in Lebanon and Turkey. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 47-year-old person who was born in Beirut, Lebanon. He was married from 1992 to 1998, when he was divorced in the United States. He does not have any children. He became a naturalized United States citizen on September 10, 1996. He works for a defense contractor, and has since July 2003. He lists his occupation as linguist, and then on the Government interrogatories as a compliance manager. In 1990 he received a master's degree in business administration. His two SF-86 documents show he worked from 1992 to 1995 as a food store manager, then was a salesman, next a cashier at a gas station from July 1995 to November 1996, and then an accountant at various companies from December 1996 to September 2003, when he went to work for his present employer. He was unemployed from June to July 1995, from November to December 1996, again from December 1999 to January 2001

² The FORM refers to Item 4 as the security questionnaire (SF-86) dated September 13, 2007. However, the SF-86 in Item 4 is dated September 25, 2003. It is the same document in Item 5, but was signed again and dated on December 29, 2004.

and finally from June to July 2003. Applicant did not disclose when he immigrated to the United States. (Items 4, 5)

Applicant's mother is a citizen and resident of Lebanon. She is 83 years old. His father is deceased. Applicant admitted he has a moral obligation to help his mother with her living expenses and medical costs. (Items 3-6)

The SOR alleges Applicant has two brothers and three sisters who are citizens and residents of Lebanon. His SF-86 discloses three brothers and three sisters living in Lebanon who are citizens of that country. One of those brothers and his wife have dual French and Lebanese citizenship. Applicant has one brother who lives in the United States and has dual citizenship with Lebanon. Applicant does not consider himself a citizen of Lebanon since becoming a U.S. citizen. (Items 3-6)

Applicant obtained and retained a Lebanese passport from September 1998 to September 2003, after he became a U.S. citizen. He obtained the passport because it made it easier to enter and exit Lebanon with it than using a U.S. passport. Applicant traveled to Lebanon from September to October 1998, from September to November 1999, from February to May 2000, and from March to April 2008. He traveled to Turkey from November to December 2006 using his U.S. passport. (Items 3-6)

Applicant opened a saving account in a Lebanese bank in October 1999. This account had \$485,000 in it until it was closed in February 2009. Applicant did not present any evidence showing where he deposited or invested that money after he withdrew it from the Lebanese bank. Applicant opened another savings account in December 2006 in Turkey. He used his U.S. passport to open that account. It had \$10,000 in it until he closed it on January 28, 2009. He did not present any evidence showing where he moved the money after withdrawing it from the Turkish bank. Applicant does not have any real estate in the United States. He describes his net worth as amounting to \$657,000. His SF-86 states an address in the United States as his home of record, but it is a street number and name with a floor number, a city and a state. The SF-86 states he will live at or near his job location, which is in a separate state from his some of record in the United States. Also, he has not declared any real estate he may own in any foreign country. (Items 3-6)

I take administrative notice of the following facts:

Lebanon

Lebanon is a parliamentary democracy in which people have the constitutional right to change their government. It has a unicameral legislature, and a president elected by the legislature. Its major elected officials have been allocated among the various religious and ethnic groups for many years, according to the Constitution and a long-ago negotiated agreement among all the parties. Lebanon is located at the eastern end of the Mediterranean Sea in the Middle East area. It operated under a French mandate between World War I and II. It was peaceful until a civil war erupted in

1978 between various religious factions. Due to this civil war the full exercise of political rights were precluded from 1978 until 1992. During the period 1992 to 2005, post-war reconstruction in Lebanon has included social and political instability, economic uncertainty, and problems with basic infrastructure, violent clashes between Israeli military forces and Hezbollah, and political assassinations. Political assassinations also occurred in 2006, 2007, and 2008.

Lebanon has a free-market economy and a strong laissez-faire commercial tradition. Historically, the Lebanese have been traders throughout the Mediterranean. The economy is service-oriented. The U.S. enjoys a strong exporter position with Lebanon and is its fifth largest source of imported good. More than 160 offices representing U.S. businesses operate in Lebanon. Since the lifting of passport restrictions in 1997, a number of large U.S. companies have opened branch or regional offices in Lebanon.

The foreign policy of Lebanon reflects its geographic location, the composition of its population and its reliance on commerce and trade. Its foreign policy is heavily influenced by neighboring Syria, which has also long influenced Lebanon's internal policies as well. For over 10 years, Syrian troops occupied part of Lebanon, and controlled its internal politics and policies. About three years ago, Syria was forced to withdraw its troops because of Lebanese opposition expressed in a popular uprising against the Syrian presence. Syria maintains some influence in Lebanon. The U.S. State Department has declared Syria to be a supporter of terrorism. Lebanon, like most Arab states, does not recognize Israel, with which it has been technically at war since Israel's establishment.

Although Lebanon is a parliamentary republic, it has some human rights problems, including: Lebanese security forces "arbitrarily arrested and detained individuals" and "instances of arbitrary or unlawful deprivation of life, torture, and other abuse." Lebanese law does not specifically prohibit torture, and security forces have abused detainees and used torture in some instances. Although Lebanese law requires judicial warrants before arrests, except in situations involving immediate pursuit, the government had arbitrarily arrested and detained persons. Many provisions of the law concerning the rights of persons arrested and detained are not observed in practice, and security forces continue the practice of arbitrary arrest and detention. Although the law prohibits it, Lebanese authorities "frequently interfered with the privacy of persons regarded as enemies of the government." Furthermore, "[m]ilitias and non-Lebanese forces operating outside the area of [Lebanon's] central government authority frequently violated citizens' privacy rights" and "[v]arious factions used informer networks and monitoring of telephones to obtain information regarding their perceived adversaries."

The terrorist group Hezbollah is a Lebanese-based radical Shi'a group and is designated by the U.S. as a "Foreign Terrorist Organization." It is allied to and supported by the Iranian Government. The Lebanese government recognizes Hezbollah as a "legitimate resistance group and political party and was represented by elected officials in the Lebanese parliament. Hezbollah also provides support to several

Palestinian terrorist organizations and is known to be involved in numerous anti-U.S. and anti-Israeli terrorist attacks. Americans have been the targets of numerous terrorist attacks in Lebanon.

The United States seeks to maintain its traditionally close ties with Lebanon and to help preserve its independence, sovereignty, national unity and territorial integrity. The U.S. provides more than \$400 million in aid to Lebanon and pledged \$1 billion in additional aid. The aid reflects the importance the U.S. attaches to Lebanon's development as a unified, independent and sovereign country.

U.S. citizens who also possess Lebanese nationality may be subject to laws that impose special obligations on them as Lebanese citizens. Presently there is a travel warning for U.S. citizens traveling to Lebanon due to the threat against westerners.

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, and 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.

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 B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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 ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(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.

These disqualifying conditions, AG ¶ 7 (a), (b), and (e), have applicability on these facts. The majority of Applicant's family are citizens and residents of Lebanon. These relationships could create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion because a third party may threaten or coerce Applicant's family members. The Hezbollah and Syrian presence in Lebanon, coupled with the residue of the civil war and the violent incidents in the past few years, create a heightened risk of coercion or pressure. The AG ¶ 7 (a) disqualifying condition applies.

Applicant has traveled frequently to Lebanon to visit his family members there, indicating a strong connection to that country. He has not shown that he has stronger ties to the United States, by owning real estate here and having family in the United States. He has the burden of proof on this issue and all issues, and has failed to present any evidence of a stronger tie to the United States than to Lebanon. Thus, the same type of security concern under AG ¶ 7 (a) would apply under this disqualifying condition AG ¶ 7 (b).

Applicant has not disclosed his income from his government contractor employment. However, after having accountant and cashier jobs from 1995 onward, and periodic unemployment, he managed to accumulate \$657,000, his net worth. He kept \$495,000 in two foreign bank accounts, which he now claims he closed but failed to reveal where he deposited it. Again, he failed to submit evidence to meet his burden of proof. Under AG ¶ 7 (e), he has a "substantial financial in a foreign country." Desiring to retain this job and its income, Applicant could be coerced or manipulated into violating security regulations. This disqualifying condition applies.

AG ¶ 8 provides conditions that could mitigate security concerns arising under this guideline:

(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.

The two potentially mitigating conditions are AG ¶ 8 (a) and (b). The remaining four mitigating conditions are not applicable for consideration because Applicant failed to submit any evidence that his familial contacts were casual and infrequent, that any foreign contacts he may have are on U.S. Government business or approved by any security authority, or that he complied with any agency requirements reporting any foreign contacts. Most importantly, the value of his savings deposits in Lebanon and Turkey was so large that it is likely they would result in a conflict and be used to influence, manipulate, or pressure Applicant as he protected them. His substantial net worth is a similar factor, as is how he accumulated so much money in the six years since 2003.

AG ¶ 8 (a), if applicable, would require Applicant to demonstrate that his familial relationship with all his siblings and mother in Lebanon, and the situation in Lebanon, could not result in Applicant him being placed in a position to have to choose between them and the interests of the U.S. Government. The greater weight of Applicant's property and family relationships are in Lebanon. The Syrian and Hezbollah presence in Lebanon makes such a choice more likely than not in Applicant's case. He has not presented any evidence to show that this mitigating condition should apply.

AG ¶ 8 (b) is another mitigating condition that requires Applicant to have a greater connections to the United States than to his ancestral Lebanon. Applicant failed to meet his burden of proof on this condition, because he did not show that he had real estate and investments of greater worth in the United States than in Lebanon. All his money was, and may be still, in Lebanon and Turkey. He did not show where the money went when he closed the savings accounts in those countries. Moving such a large sum into the United States from the Middle East region might also trigger some U.S. banking regulations, and Applicant has not shown he complied with such regulations if he did move the money to the United States. His residence is a mystery, as are the sources and current location of his substantial net worth. For these reasons, this mitigating condition does not apply.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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's family and net worth are located in Lebanon. His investments in Lebanese and Turkish banks are voluntary. There is great potential for coercion, pressure, exploitation, or duress because of all his family members and his net worth being in a country, which is subject to frequent terrorist and Syrian influence. These circumstances will continue. More significantly, Applicant failed to present evidence to establish an accurate accounting of his net worth, the location of his money, and strong connections to the United States when contrasted with his connections to Lebanon.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his 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, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a to 1.g:	Against Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge