



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



In the matter of:)
)
) ISCR Case No. 08-11250
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)
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

March 12, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

HISTORY OF CASE

On October 17, 2006, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP #1).¹ On June 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense

¹ On May 21, 2007, Applicant completed another e-QIP (e-QIP #2). On December 30, 2008, she completed a Standard Form 86 Security Clearance Application (SF 86).

Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 23, 2009, and requested a hearing before an administrative judge. DOHA assigned the case to another administrative judge on October 6, 2009, and re-assigned it to me on October 13, 2009. DOHA issued a Notice of Hearing on December 10, 2009. The hearing convened as scheduled on January 7, 2010.² Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through F into the record without objection. The record remained open until January 22, 2010, to give Applicant an opportunity to submit any additional relevant information. Applicant did not submit additional evidence and the record closed as previously ordered. DOHA received the transcript of the hearing (Tr.) on January 19, 2010.

PROCEDURAL RULINGS

Administrative Notice

Department Counsel requested administrative notice of certain facts relating to Lebanon. (Tr.11; 25.) The request and the attached documents are included in the record as Hearing Exhibit (HE) 1 with attachments I through XX. Applicant did not object to consideration of those exhibits. (Tr. 11; 25.) Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed (incorporated from those documents) are set out in the Findings of Fact, below.

FINDINGS OF FACT

In her Answer, Applicant admitted the factual allegations in SOR ¶¶ 1. a, 1.b, and 2.a through 2.g. She denied the allegations contained in ¶ 2.h. Her admissions are included herein as findings of fact.

Applicant is 43 years old and divorced. She was born in Lebanon and earned a bachelor's degree from a university there in July 1991. After graduation, she worked for an international not-for-profit for two years. (Tr. 28.) In 1993, she reconnected with an American man she previously met in Lebanon. They became engaged and she came to the United States in August 1993 on a fiancée visa. They married in September 1993 and divorced in March 1998. (GE1.) They have a 13-year-old daughter, who was born in the United States. Applicant became a naturalized U.S. citizen in January 1998. (GE 2.) She relinquished her Lebanese passport in 1998 and uses her U.S. passport for travel. (Tr. 32.)

²The scheduling of this hearing was delayed for a period of time due to Applicant's illness.

From January 1996 until May 1997, Applicant worked as a teaching assistant for a professor at a U.S. university. Subsequently, she worked in private industry in the field of information technology until August 2004, when she decided to return to Lebanon to live and raise her daughter with the help of her family. (Tr. 46.) While there, she worked in her oldest brother's business. (Tr. 66.) In July 2006, she left Lebanon and returned to the United States with her daughter because of the conflict between Lebanon and Israel. Her mother's home was almost destroyed in that war. (Tr. 46-47.)

Both of Applicant's parents were born in Lebanon. Her father is deceased. He was a member of the legislature. (GE 2; Tr. 51.) Her mother is a dual citizen of Lebanon and the United States. She became a naturalized U.S. citizen in November 2009. She primarily resides in Lebanon, but spends time with Applicant in the United States. (Tr. 51.) She intends to immigrate here with Applicant's younger, disabled brother. (Tr. 70.)

Applicant is one of seven children, all born in Lebanon. Her six siblings are citizens of, and reside in, Lebanon. Her oldest brother owns a business. He obtained an advanced degree from a U.S. university. He started an institute in Lebanon in 2004. Applicant and her oldest brother communicate frequently. He visits her in the United States. (GE 6 at 3, 5; Tr. 59-60.) Applicant made a one-time donation of \$100 to the institute November 2007. She did not make regular contributions. (GE 6 at 4.)

Applicant's second oldest brother is employed by a Lebanese university. They have some contact. (GE 6 at 7.) The third oldest brother is a self-employed civil engineer. This brother visited her in the United States in December 2007 while she was ill. (GE 6 at 7.) The fourth oldest brother is 42 years old and unemployed. He lives with Applicant's mother in Lebanon. (Tr. 58.) Applicant has frequent contact with him. (GE 6 at 7.) Applicant's oldest sister is a housewife with four children. Her brother-in-law is deceased. She speaks to this sister every couple months. (Tr. 58; GE 6 at 9.) The youngest sister is a homemaker and works for her brother'. She has some contact with her. (Tr. 59; GE 6 at 9.) Applicant also has two close friends that live in Lebanon, both of whom she regularly contacts. (Tr. 63, 66, 81.)

The weight of the evidence supports a finding that the incident involving Applicant being involuntarily contacted by a person suspected of terrorist affiliation did occur, as alleged in SOR ¶ 2.h.³ (Tr. 50; GE 3 at 3.)

Three months after returning to the United States from her two-year stay in Lebanon, Applicant applied for a linguist position with a defense contractor. In October 2006, she was hired to work with the U.S. Army. In that capacity, she worked in Iraq for two periods of time: from January 2007 to October 2007, and January 2009 to July 2009. In October 2007, she was diagnosed with cancer and returned to the United States for treatment. She completed medical therapy in May 2008. She remained in the United States until January 2009, when she resumed her work in Iraq. (Tr. 41.) In July

³The details surrounding this incident that are contained in the record were not recited in the decision in order to protect Applicant's privacy interests.

2009, she returned to the United States after receiving the SOR. (Tr. 42.) Currently, she is on medical leave due to the possible recurrence of cancer. (Tr. 79.)

Since arriving in the United States in 1993, Applicant has traveled to Lebanon twice a year to see her family, except during the time she was working in Iraq. (Tr. 45.) She enters Lebanon on her U.S. passport and uses a Lebanese Identification Card (ID), issued in 2002, as a visa, making travel in and out of the country easier.⁴ (GE 6 at 7.) The last time she used the ID card was in October 2009. She is willing to relinquish the ID card, if necessary. (Tr. 34; 67.) She intends to continue visiting Lebanon in the future, but not while she works in Iraq. (Tr. 69.) She always registers with the American embassy in Lebanon before traveling there. (Tr. 54.)

In 2009, Applicant traveled to Lebanon twice. She and her daughter went in July and stayed until September 2009. She returned in October and came home in December 2009. She stayed with her mother both times, while she was recovering from cancer treatment. (Tr. 53.) During one of these visits, the State Department issued a travel warning for Americans in Lebanon, unbeknownst to her. (Tr. 56.) She would consider any similar warnings in the future before returning. (Tr. 57.) She acknowledged that there are dangerous areas in Lebanon that she does not visit because of the presence of terrorists. (Tr. 65.)

None of Applicant's family members work for the Lebanese government. None of them belong to terrorist organizations or has been approached by terrorists. (Tr. 69.) All of them support U.S. policies and goals. (GE 6 at 12.) Her family knows that she works for the U.S. Government, but does not know that she works in Iraq. (Tr. 67; 84.) Such knowledge could jeopardize their safety in Lebanon because her family resides in a terrorist stronghold. (GE 6 at 12.)

Applicant owns a home in the United States. She does not own property in Lebanon. (Tr. 67.) She does not have any foreign investments. (Tr. 68.) She does not provide financial assistance to her family in Lebanon. (Tr. 68.) She donated \$50 to her university alma mater one time more than 15 years ago, but not annually as alleged in the SOR. (Tr. 32; GE 7.)

Applicant speaks French, Arabic, and English. (Tr. 39.) She uses those language and computer skills in her linguist position. (Tr. 43.) She held an Interim Secret clearance until it was revoked pending this proceeding. (Tr. 79) There is no evidence that she has been disciplined for violating security rules or procedures.

Applicant submitted five letters of recommendation from her supervisors and colleagues, who have known her over the past three years. All of them provided extremely and exclusively positive comments concerning her professionalism, integrity, and performance. Her direct supervisor most strongly recommended her for positions of

⁴ Lebanon requires passports and visas to enter and exit the country. American citizens traveling there for tourism are able to purchase a short-term visa at the country's border. (HE II.)

responsibility, trust, and importance. (AE A, B.) Three other linguist colleagues attest to her exceptional skills and work ethic. (AE D, E, F.)

Throughout the hearing, Applicant credibly asserted her pride of U.S. citizenship and loyalty to the United States. She has no allegiance to Lebanon. (Tr. 82.) Her command is aware of her Lebanese family and that she emails them while working in Iraq. (Tr. 84.)

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 1975 between various religious factions. Due to this civil war the full exercise of political rights was precluded from 1975 until 1991. 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 export position with Lebanon and is its fifth largest source of imported goods. 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. 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. Lebanon has had some human rights problems, including the arbitrary arrest and detainment of individuals and instances of arbitrary and unlawful deprivation of life, torture, and other abuses.

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 until recently it 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

ANALYSIS

Guideline C, Foreign Preference

AG ¶ 9 sets forth the security concern involving foreign preference:

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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election;

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

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant's actions in obtaining and maintaining a valid Lebanese ID card raise security concerns under ¶ 10(a) and ¶ 10(b). She was born a Lebanese citizen, but became a U.S. citizen in 1998. Obtaining a Lebanese ID card in 2002 and maintaining it for the past seven years is an action to acquire recognition of her continuing Lebanese citizenship by the Lebanese government and an exercise of a foreign right after receiving U.S. citizenship.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant clearly asserted that she would willingly renounce or surrender her Lebanese ID card. AG ¶ 11(b) applies.

Guideline B, Foreign Influence

The security concern relating to the government's concern about foreign influence is set out in AG ¶ 6:

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 two conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and ⁵

(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.

Since 1993, Applicant has had frequent personal and telephonic contact with her mother and six siblings, who are residents and citizens of Lebanon. Although Lebanon has had a close relationship with the United States for many years, it also continues to have human rights issues and has been victimized by terrorist organizations and attacks. Applicant's family resides in an area that is controlled by a terrorist organization. These facts create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion, and a potential conflict of interest between her obligation to protect sensitive information and desire to help her native country and family members there. Legitimate security concerns are raised under AG ¶¶ 7(a) and 7(b).

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application to the disqualifying conditions are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

⁵ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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.

None of Applicant's family members work for the Lebanese Government. In their employment positions, it is improbable that any of them would have any interest in acquiring protected information. However, their physical presence in a terrorist-controlled section of Lebanon creates a substantial potential that their interests could be threatened to the point that Applicant would confront a choice between her family's interests and those of the United States, particularly if her employment became known to the terrorists. Based on that fact, and Applicant's strong familial relationships and frequent visits, Applicant could foreseeably be placed in a position of having to choose between the interests of her family and those of the United States. AG ¶ 8(a) does not have application.

Applicant produced evidence warranting a partial application of AG ¶ 8(b). She acknowledged her loyalty and allegiance to the United States and could be expected to resolve any conflict of interest in favor of the United States. She moved to the United States in 1993 and became a naturalized citizen in 1998. She has held various jobs over the years. Her daughter is a U.S. citizen and resident. Her mother is a naturalized U.S. citizen, periodically residing in the United States. Applicant owns a home in the United States. She receives medical care in the United States, which is important, given her recent medical issues. For two years she performed with excellence as a translator for the U.S. Army.

AG ¶ 8(c) does not apply because Applicant has consistently visited and communicated with her mother and siblings since 1993, such that her communication and contacts cannot be construed to be casual or infrequent, as required under this condition.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors (APF) listed at AG ¶ 2(a). They are as follows:

(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.

The Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

Five circumstances weigh against Applicant in the whole-person analysis. First, there is a significant risk of terrorism and various human rights abuses in Lebanon, despite its ally status with the United States. More importantly for security purposes, Applicant's family lives in an area controlled by terrorists, who are hostile to the United States and may seek classified information. Such terrorists could attempt to use Applicant's siblings or mother to obtain classified information if they became aware of her employment with the U.S. Army. Second, she personally encountered the presence of suspected terrorists. Third, she had numerous connections to Lebanon before leaving it in 1993. Following her birth, she spent her formative years there, along with her family. She graduated from a university located there. Fourth, her siblings and mother are residents and citizens of Lebanon. Fifth, she has frequent contact with her family and two close friends there, including yearly visits and a previous extended stay from 2004 to 2006. She, understandably, relies on them for support during her unfortunate medical problems.

Some mitigating evidence weighs in favor of granting Applicant a security clearance. First, she is a mature person, who came to the United States in 1993 to start a family. She has been a naturalized citizen for almost twelve years. She has worked for a university and private companies while in the United States. Second, her daughter was born in the United States and resides here. Her mother is a recently naturalized U.S. citizen. Third, she has a strong sense of patriotism toward the United States and decided to support the United States in its efforts in Iraq. Her co-workers praise her as loyal and honest, and consider her work important. Those are commendable and noteworthy accomplishments in her life. However, in balancing both sets of factors, her ties and connections to Lebanon remain strong and deep. Her decision to frequently return to Lebanon, despite valid concerns for the safety of her family given her employment in Iraq, heightens the potential for risk and causes further security concern.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant mitigated the security concerns pertaining to foreign preference, but not those arising under foreign influence and the whole-person analysis. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.h:	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.

SHARI DAM
Administrative Judge