



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



In the matter of:)	
)	
)	ISCR Case No. 10-00346
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O’Neil, Esq., Department Counsel
For Applicant: *Pro se*

December 6, 2010

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On July 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. DOHA acted 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 adjudicative guidelines (AG), effective within the Department of Defense on September 1, 2006.

Applicant’s answer was received by DOHA on August 20, 2010. She elected to have her case decided on the written record. Department Counsel submitted the

Government's File of Relevant Material (FORM) on September 24, 2010. The FORM was mailed to Applicant and she received it on October 4, 2010. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On October 31, 2010, Applicant provided a one page response. The case was assigned to me on November 8, 2010.

Evidentiary Ruling—Administrative Notice

Within the FORM, Department Counsel requested I take administrative notice of certain facts relating to Lebanon. I have done so. The request and the attached documents were not admitted into evidence but were included in the record as described in the FORM as attachments I through XVIII. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 30-year-old employee of a defense contractor. She was born in the United States of a Lebanese father and mother. Her father owned a business in the United States at that time. Her family returned to Lebanon shortly after her birth where she was raised in a Christian neighborhood of Beirut. She attended private schools through high school and graduated from a university with an engineering degree in 2001. In September 2001, she moved to the United States to pursue her master's and doctorate degrees in engineering. While in school, she met her future husband. He was born in Lebanon, but immigrated with his family to the United States in 1985. He became a naturalized United States citizen in about 1990. Applicant and her husband were married in 2006. They have a 14-month old son. Applicant's husband is a physician and owns his own practice in the United States.¹

Applicant admits that her mother, brother, and sisters are residents and citizens of Lebanon. She further explains that none of them have ever held political office or have been employed by the Lebanese government. Her mother is a homemaker who cares for Applicant's elderly grandmother. Applicant sponsored her mother to receive permanent residence status in the United States, which she received in 2007. Her mother splits time between the United States and Lebanon. Applicant's brother is a United States educated professor of biology employed by a private university in Lebanon. One of Applicant's sisters is a homemaker and the other is a manager of a private business.²

¹ Item 4, p. 7 of 21.

² Item 4, p. 8 of 21.

Applicant also admits that her brothers-in-law, sister-in-law, and a friend are citizens and residents of Lebanon. None of them have ever held political office or are employed by the Lebanese government. One of her brother-in-laws is a bank director and the other is a private contractor. Her sister-in-law is a United States trained public administrator who works with an international development company headquartered in Washington, DC, but with an office in Beirut, Lebanon. Her friend is a graphic designer who works for a private university.³

Applicant's grandmother is a citizen of Syria and a resident of Lebanon. Applicant's grandmother is 85 years old and in poor health. She has resided in Lebanon for 25 years and has not been to Syria since 1985. She has no contact with any relatives in Syria. She has no affiliation with the Lebanese or Syrian governments.⁴

Applicant admits that she owns real estate investments and is the co-owner of an apartment in Lebanon. Both the investments and the apartment were acquired as an inheritance upon her father's death. The value of the assets, \$28,000 for the investments and \$200,000 for the apartment, is insubstantial compared to Applicant's United States assets. Applicant and her husband show an annual income of over \$440,000 and have savings in excess of \$600,000. Additionally, her husband's medical practice is valued at \$1.5 million and their home is assessed at over \$750,000.⁵

Applicant's travels to Lebanon were for family visits only. Since 2004, she used her United States passport to travel to Lebanon. She no longer has a Lebanese passport. She always stayed with family members during her visits.⁶

A character letter from Applicant's supervisor attests that she is a trusted employee and highly regarded colleague. Her engineering background proved valuable in her projects supporting the United States Army and Navy. Her supervisor states she is loyal, reliable, and trustworthy. She is described as having "deep and growing roots in the United States and can be an important asset to her company and the U.S. government." She is highly recommended for a security clearance. She also supplied a letter from her husband who described his family's strong ties to the United States.⁷

³ *Id.*

⁴ Items 4, p. 9 of 21.

⁵ Items 4, p. 9-10, 14-21 of 21.

⁶ Items 4, p. 9 of 21.

⁷ Items 4, p. 12-13 of 21.

Lebanon

Lebanon is a parliamentary democracy in which people have the constitutional right to change their government. Due to civil war the exercise of political rights were precluded until 1992. Lebanon has a free-market economy and a strong laissez-faire commercial tradition. The economy is service-oriented. The United States enjoys a strong exporter 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 as well. 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 United States as a "Foreign Terrorist Organization." The Lebanese government recognizes Hezbollah as a "legitimate resistance group" and political party and until recently 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-United States 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 United States provides more than \$400 million in aid to Lebanon and pledged \$1 billion in additional aid. The aid reflects the importance the United States 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 adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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(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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

The security concern for Foreign Influence is set out in AG ¶ 7:

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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable 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;

(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.

Applicant's mother, grandmother, brother, two sisters, two brothers-in-law, a sister-in-law, and a friend are residents of Lebanon. Applicant owes real estate investments and co-owns an apartment in Lebanon. AG ¶¶ 7(a), (b), and (e) have been raised by the evidence.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(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.

Applicant was born in the United States and, although she returned to Lebanon during her youth, she returned to the United States to obtain her master's and doctorate degrees and has remained here ever since. She married a United States citizen who has a thriving medical practice. They also have a child who is a native born United States citizen. They are financially secure and have established well-grounded lives in this country. She traveled to Lebanon over the years solely to see family members. There was no evidence to suggest that any of her Lebanese relatives or her friend are influenced by the politics of Lebanon. Merely knowing people from other countries does not create a heightened risk. I find that Applicant has deep and longstanding relationships and loyalties in the United States. Lebanon has some issues with human rights. Neither her relatives nor her friend have jobs or contacts with the Lebanese government. It is unlikely that Applicant would be placed in a position of having to choose between the interest of a relative and the United States. It is clear that even in the unlikely event such a situation would arise she would choose the interests of the United States. Therefore, I find AG ¶¶ 8(a) and (b) apply to SOR ¶¶ 1.a-1.c, and 1.f.

Applicant's property interests in Lebanon are insignificant when contrasted to her income and assets in the United States. Even Department Counsel concedes in the FORM that this mitigating factor applies to SOR ¶¶ 1.d and 1.e. I find AG ¶ 8(f) applies.

Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to

which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in the United States. She spent much of her youth in Lebanon. She returned to the United State, attended graduate school, and has remained here ever since. She married and started a family here. She is very well thought of by her current employer, where her engineering skills are highly valued.

I considered the totality of Applicant's family ties to Lebanon. Lebanon is a parliamentary republic which traditionally has maintained close ties with the United States. However, Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁸ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. Also important is whether the foreign country is associated with a risk of terrorism.

Lebanon has human-rights issues and has been victimized by terrorism. The influence of Syria and the presence of Hezbollah in Lebanon is a concern. However, Applicant has proven that she supports United States military forces by working on projects where her engineering background has proven to be valuable assets. The Appeal Board has stated that "an applicant's proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case."⁹ The Appeal Board case is distinguishable from Applicant's case as it was

⁸ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

discussing an applicant who performed dangerous work as a translator in Afghanistan, which is not what Applicant has done. Nonetheless, Applicant's work merits special consideration.

Applicant's life, career, substantial assets, and allegiance all lie in the United States. After considering all the evidence, including her valuable and highly regarded work for her current employer, I am convinced that this country is best served by granting Applicant a security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Influence security concerns.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.f:	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.

Robert E. Coacher
Administrative Judge

⁹ ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008).