



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



In the matter of:)	
)	
)	ISCR Case No. 10-01554
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: James R. Klimaski, Esq.

April 22, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On October 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant's application, citing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. DOHA received the request on December 15, 2010, and the case was assigned to me on December 23, 2010. DOHA issued a notice of hearing on February 11, 2011, setting the case for March 3, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified on her own behalf, and presented five witnesses. She

submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 11, 2010. Eligibility for access to classified information is denied.

Evidentiary Ruling

Department Counsel requested that I take administrative notice of adjudicative facts about Lebanon. The request and its enclosures were not admitted in evidence but are attached to the record as HX Exhibit I. The facts administratively noticed are set out below in my Findings of Fact.

Findings of Fact

In her answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions in her answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 26-year-old program assistant of a management and engineering technology company. She is single and has no children. She has been with her current employer since February 2009. She has never held a clearance, but initiated a security clearance application in 2007.

Applicant was born in the United States of a Lebanese-American father and an American mother. The family is Christian. She moved to Lebanon in 1994 with her father, mother and brother. She attended a private school in Lebanon. When she was 14 years old, her father obtained a Lebanese identity card for Applicant to maintain her legal status in Lebanon. She and her mother and brother returned to the United States in 2000. Applicant graduated from an American high school in 2002, and obtained an undergraduate degree from an American university in 2006. She obtained her master's degree in 2008. (GX 1)

Applicant lives and works in the United States. She completed a graduate assistantship in the international office of her university. (GX 1) She served as an international student advisor for the federal government prior to her current employment. (Tr. 51)

Applicant's father, who was a lawyer, was a naturalized United States citizen. He obtained his LL.M. from an American university. He practiced law in the United States but returned to Lebanon in 1994 with his family and remained there until July 2006, when he was evacuated as an American citizen. He died later that year in the United States (2006).

Applicant's mother and brother also reside in the United States. Applicant's mother has dual citizenship with the United States and Lebanon due to her marriage. She testified at the hearing that she accompanies Applicant on trips to Lebanon. She acknowledged that Applicant's father obtained an identity card for Applicant when she

was very young. (Tr. 74) Applicant's mother also has a Lebanese identity card. She explained that she travels on her U.S. passport but carries the identity card. She elaborated that she carried the Lebanese identity card because it is a safeguard in the country in case of an emergency situation. She also had a Lebanese driver's license but it expired. (Tr. 77) Applicant obtained a Lebanese driver's license in 2003. She uses it as a convenience when she travels to Lebanon.

Applicant's grandmother is a citizen and resident of Lebanon. She is 94 years old and in poor health. Applicant acknowledged that she is close to her grandmother. When Applicant lived in Lebanon as a child, she saw her grandmother daily. Applicant visits her grandmother annually. She states that the main reason she continues to visit Lebanon is because her visits are meaningful to her grandmother. Applicant also maintained contact with her by telephone until recently. Her grandmother is too ill to speak on the phone. (Tr. 58)

Applicant has three aunts, who are citizens and residents of Lebanon. Her uncle is a judge in the Lebanese judicial system. Applicant sees her aunts and uncle once a year when she visits her grandmother. She is not close to her uncle. (Tr. 48) Applicant reports that her uncle has distanced himself from the family. One aunt is a pediatrician, another is an elementary school director; and the third aunt is a homemaker. Applicant speaks to them on the telephone once a month. (Tr. 65) She sometimes emails them as well.

Since 2002, Applicant has visited Lebanon annually, usually during the summer school break and Christmas to visit her father and her relatives. Her father died in 2006, but Applicant travelled to Lebanon in October 2006 to attend a memorial for her father. Since his death, she continues to travel annually to visit her grandmother and her relatives. Her last visit was in December 2009. She usually stays two weeks and stays in her father's old residence. (Tr. 61) She used her U.S. passport for all travel. At the hearing, Applicant explained that she does not maintain a Lebanese passport. The passport expired in 2006. (GX 4) However, Applicant uses the Lebanese identity card for security reasons. (Tr. 55) She states that it allows her to travel safely in the country. She elaborated that she could be held for questioning if something would arise. (Tr. 56)

During a security interview in October 2007, Applicant told a security investigator she was willing to renounce her Lebanese citizenship if required to do so. (GX 3 at 3) She reiterated her willingness to renounce her Lebanese citizenship at the hearing. (Tr. 56)

In 2009, Applicant told the investigator that she would think seriously about renouncing her Lebanese citizenship in order to obtain a security clearance. The report notes that she would have to know the specific reasons why she would be required to renounce her Lebanese citizenship. (GX 2)

Applicant has a Lebanese friend who works and lives in Lebanon. She has known her since 2000. Applicant maintains contact with her by email. She also saw her in Lebanon in 2009. (Tr. 65)

Applicant presented a letter from her supervisor. Applicant's supervisor describes her as an outstanding professional in her work with the international visitor program office. Applicant demonstrates a high level of integrity in her work. She maintains a strong work ethic and has a commitment to customer service. Applicant possesses strong organizational skills. She is reliable, dependable, and trustworthy. (AX A) Applicant's supervisor also testified at the hearing that she is happy to have Applicant as part of the team. (Tr. 91)

Various family friends testified at the hearing that Applicant is proud of her family heritage, but believe that Applicant has not expressed a preference for another country other than the United States. (Tr. 95) All believe Applicant has a loyalty to the United States. (Tr. 104)

Lebanon

I take administrative notice of the following adjudicative facts about Lebanon. Although Lebanon is a parliamentary republic, it has 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.

Its foreign policy and internal policies are heavily influenced by Syria, who maintains intelligence agents in Lebanon and is a state sponsor of terrorism. The unstable political situation in Lebanon enables foreign terrorist organizations to operate within its borders. Hizballah is the most prominent terrorist group in Lebanon. The Lebanese government recognizes Hizballah as a legitimate resistance group and political party. Hizballah maintains offices in Beirut and elsewhere in Lebanon, has liaison officers to Lebanese security forces, and is represented by elected deputies in the Lebanese parliament. Hizballah is closely allied with Iran, supports a variety of violent anti-Western groups, and has been involved in numerous anti-U.S. terrorist attacks.

Lebanon has a poor human rights record. Lebanese security forces have engaged in arbitrary arrest, murder, torture, and other abuses. There is an atmosphere of government corruption and lack of transparency. Militias and non-Lebanese forces operating outside the area of Lebanese central government authority have used informer networks and monitored telephones to obtain information about their perceived adversaries.

The terrorist group Hizballah is a Lebanese-based radical Shi'a group and is designated by the United States as a "Foreign Terrorist Organization." The Lebanese government recognizes Hizballah as a "legitimate resistance group" and political party and until recently was represented by elected officials in the Lebanese parliament.

Hizballah also provides support to several Palestinian terrorist organizations and is known to be involved in numerous anti-United States and anti-Israel terrorist attacks. Americans have been the targets of numerous terrorist attacks.

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

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The security concern under Guideline B is set out in AG ¶ 6 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

A disqualifying condition under this guideline may be raised by “contact with a foreign family member . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b).

Where family ties are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002).

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

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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., 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 U.S.

Applicant’s father is deceased and her mother is an American citizen who resides in the United States. The SOR does not allege any security concerns arising from Applicant’s mother’s dual citizenship with Lebanon, and Department Counsel presented no evidence raising such concerns.

Applicant’s grandmother is a citizen and resident of Lebanon. Applicant has “high affection” for her grandmother and maintains regular contact with her. She visits her every year with her mother and brother. The presence of her grandmother and her aunts and uncle in Lebanon and their vulnerability to abuse by Lebanese authorities as well as terrorists in Lebanon raises the “heightened risk” in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a), and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). This condition is not established because Applicant’s relationships with her grandmother and aunts are close, and they reside in a country with a poor human rights record where terrorism is rampant and a terrorist organization is part of the political structure.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not “in a position to be exploited.” Directive ¶ E2.A2.1.3.1. The Appeal Board consistently applied this mitigating condition narrowly, holding that an applicant should not be placed in a position where he or she is forced to make a choice between the interests of the family member and the interests of the U.S. See ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006); ISCR Case No. 03-24933 at 6 (App. Bd. Jul. 28, 2005); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005); ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant “can be expected to resolve any conflict of interest in favor of the U.S. interest.”

Applicant’s loyalty to her grandmother and relatives certainly is not “minimal.” She is still connected to her Lebanese heritage, as demonstrated by her visits each year since 2002 to see family members living in Lebanon. The evidence is insufficient to establish that Applicant would be likely to resolve a conflict of interest in favor of the U.S. interests if her grandmother or relatives were threatened by foreign agents, Lebanese security forces, or terrorist groups operating in Lebanon. Thus, I conclude Applicant has not met her burden of fully establishing this mitigating condition.

Guideline C, Foreign Preference

The security concern under this guideline is as follows: “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 ¶ 9. Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999).

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant’s repeated use of her Lebanese identity card after becoming a U.S. citizen raises this disqualifying condition.

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). Appellant continues to exercise Lebanese citizenship by possessing and using her Lebanese identity card. This mitigating condition is not established.

Security concerns under this guideline also may be mitigated by if “the individual has expressed a willingness to renounce dual citizenship.” AG ¶ 11(b). Applicant told a security investigator she was willing to renounce her Lebanese citizenship, and she repeated her willingness to renounce it at the hearing. This mitigating condition is established. Foreign Preference concerns are mitigated due to the application of AG 11(b).

Whole-Person Concept

Under the whole person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person-concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a U. S. citizen. She spent part of her youth in Lebanon due to her father’s work. She returned to the United States in 2000. She obtained her undergraduate and graduate education in the United States. She has an excellent reference from her current employer. She is described as a trustworthy individual. Her mother and brother reside in the United States. The presence of her grandmother and relatives in Lebanon and the political conditions in Lebanon are beyond her control. The presence of her grandmother and her aunts in Lebanon, her bonds of affection for those family members, and her repeated visits to Lebanon, accompanied by her mother and brother, present a vulnerability to pressure, coercion, exploitation, or duress that is not mitigated.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference, but she has not mitigated the security concerns based on foreign influence. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge