



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



In the matter of: )  
)  
) ISCR Case No. 10-03125  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

January 25, 2012

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant’s step-mother and half-sister are citizens and residents of Lebanon. His brother and half-brother are citizens of Lebanon residing in the United States. His father is a naturalized U.S. citizen living in Chile. There is more than \$71,000 of delinquent indebtedness in his name, which remains unpaid. Applicant has failed to rebut or mitigate the security concerns under foreign influence and financial considerations. Clearance is denied.

**Statement of the Case**

Applicant contests the Department of Defense’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

a Statement of Reasons (SOR) on June 10, 2011, detailing security concerns under Guideline B, foreign influence and Guideline F, financial considerations.

On June 17, 2011, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated July 20, 2011. The FORM contained 14 attachments. On August 15, 2011, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on September 15, 2011. As of October 15, 2011, no response had been received. On October 31, 2011, I was assigned the case.

### **Lebanon**

I take administrative notice of the following facts. Lebanon is a nominal democracy with a less-than-perfect human rights record. Lebanese security forces arbitrarily arrest and detain individuals, and torture of detainees remains a problem. Militias and non-Lebanese forces, operating outside the central government's authority, frequently violate citizens' privacy rights.

Lebanon has both a long history of civil war and of foreign influence by Syria. Syria has been designated by the United States as a state sponsor of terrorism, providing support to Hizballah (Party of God). From 1976 to 2005, Syria maintained troops in Lebanon and the Syrian military is believed to maintain intelligence assets in Lebanon. Lebanon is not a state sponsor of terrorism, but is a permissive environment for groups recognized by the U.S. as terrorist organizations, which Lebanon considers "freedom fighters" against Israel. The Lebanese government recognizes Hizballah as a legitimate resistance group and political party. Hizballah is a Lebanese-based radical group that is the most technically capable terrorist group in the world. The United States remains extremely concerned about the role Hizballah plays in Lebanon. The U.S. State Department continues to maintain a travel warning for U.S. citizens contemplating travel to Lebanon.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR except for owing a \$152 collection account. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 27-year-old intelligence analyst having previously been a linguist/cultural advisor who has worked for a defense contractor since September 2006, and seeks to obtain a clearance. (Ex. 4, 6) In May 2003, he was issued a secret security clearance when in the U.S. Marine Corps. He left the Marine Corps in September 2006 as a sergeant (E-3). His September 2010 personal financial statement

lists a \$600 monthly disability, but gives no further explanation as to the nature or origin of the disability. (Ex. 11) Applicant produced no work or character references.

Applicant was born in Lebanon and became a naturalized U.S. citizen in April 2009. (Ex. 4) In November 2005, he married a native born U.S. citizen and divorced in May 2007. (Ex. 6) His mother and father were born in Lebanon. In February 2001, his mother became a naturalized U.S. citizen. His step-father was born in Lebanon and became a naturalized U.S. citizen in June 1990. His mother and step-father live in the United States.

In September 2006, when Applicant completed his Electronic Questionnaires for Investigations Processing (e-QIP), he stated he had no ongoing contact with this father and did not know his father's citizenship. (Ex. 4) In his November 2009 e-QIP, he indicated his father is a U.S. citizen who is a self-employed importer and exporter, living in Chile. (Ex. 6, 10) As of January 2010, he stated he talked with his father monthly. (Ex. 10) He provided no naturalization information concerning his father.

Applicant's step-mother, a Lebanese government secretary, is a citizen and resident of Lebanon. She has been his step-mother since he was eight months old. (Ex. 10) They talk by telephone once a month and last met for two weeks in December 2008 when Applicant visited Lebanon. (Ex. 10) His half-sister is a citizen and resident of Lebanon and, as of January 2010, was a high school student. (Ex. 10) He talks with her monthly by telephone. (Ex. 10)

Applicant's brother, who lives in the United States, was born in Lebanon and works as a gas station clerk in the United States. (Ex. 4, 10) He talks to his brother weekly. (Ex. 10) He has a half-brother, a citizen of Lebanon, who is in the United States on a student visa. Applicant has not seen this half-brother in seven years even though his half-brother has lived in the United States for more than two years. He talks with this half-brother two or three times a week. (Ex. 10) He has another half-brother who was born in the United States. (Ex. 4) He asserts, none of his relatives have any affiliation with a foreign intelligence service.

In 2005, Applicant enlisted in the U.S. Marine Corps and was deployed to Iraq. (Ex. 10) In January 2010, Applicant asserts that while deployed his father used Applicant's social security number to purchase two homes, lease a car, and open numerous credit accounts. (Ex. 10) Six months after returning from Iraq, he learned the homes went to foreclosure and the car was repossessed. When he confronted his father about the debts, his father acknowledged the debts and indicated he would pay them. It is Applicant's intent to allow his father to pay the debts. (Ex. 10) As of January 2010, Applicant's monthly gross income was \$7,000 to \$10,000. (Ex. 10)

Applicant's September 2010 credit bureau report (CBR) indicates a \$274,000 house was purchased in January 2005 with monthly payments of approximately \$2,800. (Ex. 9, 12, 13) Timely payments were made for approximately two years before the house went to foreclosure. A second home was purchased in August 2005 for \$180,000

with monthly payments of approximately \$2,100 that has also gone to foreclosure. (Ex. 9, 12, 13) A \$4,718 credit card account (SOR 2.a) was charged off. (Ex. 7, 8, 9, 12) His July 2011 CBR lists this account as being disputed by the consumer. (Ex. 13)

Applicant's November 2009 CBR lists a \$152 collection account (SOR 1.c) for an account opened in June 2008. (Ex. 7) The same CBR lists a \$4,000 credit card collection account (SOR 1.e) for an account opened in March 2005. (Ex. 7, 8, 9, 12, 13) As of September 2010, Applicant was a client of a credit service. (Ex. 11) There is no documentation as to what services this company has provided Applicant.

## **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 must be considered 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 interests of 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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**

Under Guideline B, the government’s concern is:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out two conditions that could raise a security concern and may be disqualifying in this case. These are:

- (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
- (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.

AG ¶¶ 7(a) and 7(b) apply because of Applicant’s relationships with his step-mother and half-sister who are citizens and residents of Lebanon. Applicant was born in Lebanon and became a naturalized U.S citizen. Applicant talks by telephone with his step-mother and half-sister monthly. Applicant has ties of affection for, or obligation to, them. His relationships with them are sufficient to create “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” His relationships with immediate family members in Lebanon create a concern about Applicant’s “obligation to protect sensitive information or technology.” For example, if the Lebanese government,

Hizballah, or terrorists in Lebanon wanted to expose Applicant to coercion, it could exert pressure on his step-mother or half-sister. Applicant would then be subject to coercion through his relationship with these relatives and sensitive or classified information could potentially be compromised.

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.

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 or inducement. Lebanon is not a state sponsor of terrorism, but is a permissive environment for terrorist organizations and recognizes Hizballah. The United States remains extremely concerned about the role Hizballah plays in Lebanon. Additionally, Lebanon has a less-than-perfect human rights record. Lebanese security forces arbitrarily arrest and detain individuals, and torture of detainees remains a problem. Militias and non-Lebanese force, operating outside the central government's authority, frequently violate citizens' privacy rights.

The risk of coercion, persuasion, or duress is significantly greater if a family member is associated with or dependent upon a foreign government. Applicant's step-mother is a secretary working for a branch of the Lebanese government. The nature of the relationship of Lebanon with the United States places a significant burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Lebanon do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Lebanon who might be coerced by terrorists or other governmental entities in Lebanon.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence to mitigate these concerns. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

None of the mitigating conditions apply to this case. Considering the totality of the facts and circumstances, Applicant could be placed in a position of having to choose between the interests of his relatives living in Lebanon and the interests of the United States. Applicant's contact with his foreign family members creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant's brother was born in and currently resides in the United States. He is not a security concern. His step-brother is a Lebanese citizen, but is a student in the United States and is not a security concern. His father, living in Chile, is not a security concern.

## **Guideline F, Financial Considerations**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant's CBR show a history of financial problems. His CBR lists a charged-off account, two foreclosures, and two collection accounts totaling more than \$71,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Applicant asserts that the delinquent accounts were wrongfully opened by his father. Only one of the five delinquencies is listed as being disputed on his latest CBR. In January 2010, Applicant stated his father said he would pay the debts. A promise by someone who wrongfully used another's social security number to open numerous credit card accounts, lease a vehicle, and purchase a car is of limited value. Someone who acts so inappropriately is also likely to make promises they do not intend to keep. Of greater importance is the fact that there is no documentation showing payment on the debts.

Applicant meets none of the mitigating factors for financial considerations. He has known of the debts since six months after his return from being deployed to Iraq. Having left the Marine Corps in September 2006, he must have known of the delinquent accounts since 2007. He was questioned about them in January 2010. As of September 2010, he was a client of a credit service, but he failed to document what services the

company has provided. Only one of the delinquent debts have been challenged by him on his CBRs. The delinquencies are recent, multiple, and remain unpaid.

The only evidence of circumstances beyond his control is his statement that his father wrongfully incurred the debts in his name. Even were that true, he has not acted responsibly in addressing his debts. There is no evidence of any action taken by Applicant with the exception of disputing one credit card debt. There is no evidence of credit or financial counseling, that his financial problems are under control, or that he has a plan to bring them under control. There is no good-faith effort shown to satisfy his debts. I conclude Guideline F against Applicant.

### **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 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 immigrated to the United States and became a naturalized U.S. citizen in December 2005. The record is silent as to his duty performance. Because Applicant chose to have this matter handled administratively, Applicant's demeanor or appearance can not be evaluated, nor can positive determination as to his truthfulness, sincerity, honesty, or openness be made. Applicant's service in the Marine Corps was favorably considered as was the possibility that his service may have resulted in a disability.

Applicant's contact with his family members in Lebanon creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion that he has not mitigated. Additionally, Applicant's CBRs lists more than \$71,000 in foreclosures, charged-off or delinquent accounts. The issue is not simply whether all of the delinquent accounts have been paid—it is whether his financial circumstances raise concerns

about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Applicant has known of the debts since 2007 and they remain unpaid.

Overall, the record evidence leaves me with substantial doubt about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from the foreign influence and financial considerations guidelines.

### **Formal Findings**

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

Paragraph 1, Foreign Influence:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c – 1.e:	For Applicant
Paragraph 2, Financial considerations:	AGAINST APPLICANT
Subparagraphs 2.a – 2.e:	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 a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge