



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



In the matter of:)
)
) ISCR Case No. 10-05461
)
Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esq., Department Counsel
Richard Stevens, Esq., Department Counsel

For Applicant: *Pro se*

August 30, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on September 9, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On March 1, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).² Applicant submitted an Answer to the SOR, in which he admitted the three allegations. He signed his notarized Answer on March 17, 2011, and requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on June 13, 2011, and the case was assigned to me on June 15, 2011. DOHA issued a Notice of Hearing on July 15, 2011, and I convened the hearing as scheduled on August 10, 2011. Department Counsel offered three exhibits, which were admitted as Government Exhibits (GE) 1 through 3. Applicant testified, and offered four exhibits, which I admitted as Applicant Exhibits (AE) A through D. The record closed on August 10, 2011.

Procedural Ruling

I take administrative notice of facts relating to Lebanon, set forth in 18 documents provided by Department Counsel. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant, 50 years old, was born in Lebanon. He earned a bachelor's degree there in 1977. He also studied economics for two years in Kuwait, but did not receive a degree. He did not serve in the Lebanese military. He came to the United States in 1986, at the age of 26, stayed for one year, and returned to Lebanon. He returned to the United States in 1989, where he married a dual Lebanese-U.S. citizen. Applicant became a naturalized U.S. citizen in 1994. His two children, 14 and 17 years of age, were born in Lebanon and are dual Lebanese-U.S. citizens. Since 2008, he has been employed by a defense contractor as an intelligence analyst. Applicant has held a security clearance since 2003 without incident. (GE 1, AE A; Tr. 12, 25-26, 30, 32)

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Applicant attached four documents to his Answer to the SOR. They will be identified in this decision as Answer Documents (AD) 1 – 4.

Applicant speaks five languages, including Arabic. He became an independent contractor for federal agencies in 2000. After September 11, 2001, he applied to be a language analyst for a federal agency that was seeking Arabic speakers. After a two-year security investigation, the federal agency granted his security clearance request. His job involved interpreting, translating, and assisting with training and missions. His job focused on terrorism and intelligence issues. He is also a certified hostage negotiator. He has trained foreign law enforcement personnel in anti-terrorism tactics. (GE 1; AE A, D-1; Tr. 26-27, 56-57)

During his employment with the federal agency, Applicant volunteered to work in combat zones. He worked in Iraq in 2005 and in 2006. He also worked in other middle-east countries and at Guantanamo Bay. He served as an expert witness for the prosecution in a court-martial, where his testimony helped convict a soldier of Lebanese descent. (AE A, D; Tr. 26-27)

Applicant's mother, 80 years old, is a citizen and resident of Lebanon. She suffers from Alzheimer's disease. She has always been a homemaker. Applicant talks with her once or twice per month. Applicant and his siblings provide financial support to their mother. Applicant's portion is about \$500 per month. Applicant has two brothers and two sisters. One brother lives in the United States, and is a dual Lebanese-U.S. citizen. Applicant talks with him two or three times per week. As of the date of Applicant's security clearance application, his other brother was living in Canada, and held dual Canadian-Lebanese citizenship. (GE 1, 2, 3; Tr. 43-47)

Applicant's two sisters and their husbands are citizen-residents of Lebanon. He speaks with his sisters about once per month. (Tr. 43-44) One brother-in-law is a U.S. citizen. He operates a school, and Applicant's sister owns and manages the attached kindergarten. If emergencies arise. Applicant's brother-in-law is also the point of contact for U.S. citizens who reside in the local area. Applicant's other sister is ill and does not work. Her husband is a salesman. None of Applicant's family in Lebanon has connections with the government. In 2004, 2006, and 2010, Applicant traveled to Lebanon to see his family, primarily his mother. He held a security clearance at the time and informed his security officer of the trips. Applicant, along with his wife and children, stayed with his mother. (GE 1, 2, 3; Tr. 28-30, 39-40, 43-47)

Applicant's wife has two brothers. One is a U.S. citizen, currently living in Lebanon. Applicant and his wife talk with him once every few months. Applicant speaks more often with his wife's other brother. He is a U.S. citizen, living in the United States, and working as a language analyst for a defense contractor. (GE 2, 3; Tr. 42-43)

Applicant has owned two homes in the United States. He sold one in 2010, and currently lives in the other. He also has U.S. bank accounts, stocks, and a 401(k). At the time of his March 2010 security interview, his U.S. assets totaled \$523,500. (GE 1, 2)

Applicant's former supervisor, who has known him since 2004, described Applicant as "keenly aware of the confidential and sensitive nature of our work. He always handled classified information with utmost care according to its sensitivity." Applicant's performance as an interpreter was rated as excellent in his evaluations of 2004 and 2005. His evaluator noted that Applicant was "highly commended" for his "tremendous efforts" during a temporary duty assignment in Iraq. His work as a linguist, during investigations in Iraq in 2005, was also praised by the on-site U.S. Army colonel and commander. His contributions to cases involving terrorists and high-value detainees were described as "incredibly valuable" and the commander noted that Applicant's tireless work "in an austere environment, under dangerous conditions significantly advance[d] the task force's mission." On his second tour in 2006, his federal agency commander in Baghdad described Applicant's "unselfish devotion to duty and the personal sacrifices he accepted by volunteering to serve in a war zone is a true measure of his character." (A.D. 2, 3, 4; AE A, B, C, D)

Administrative Notice: Lebanon

Lebanon is a parliamentary republic that became independent in 1943. Its history since independence has included periods of political turmoil and periods of prosperity. Civil war erupted in 1975, and the full exercise of political rights was precluded from 1978 until 1992. During the post-war reconstruction period from 1992 to 2005, Lebanon experienced social and political instability, economic uncertainty, problems with basic infrastructure, violent clashes between Israeli military forces and Hezbollah, and political assassinations. Political assassinations also occurred in 2006, 2007, and 2008.

For over ten years, Syrian troops occupied part of Lebanon, and heavily influenced the country's foreign policy and internal politics. In 2005, Syria was forced to withdraw its troops because of Lebanese opposition expressed in a popular uprising; however, Syria maintains some influence in Lebanon. Syria has been designated by the United States as a "state sponsor of terrorism."

The terrorist group Hezbollah is a Lebanese-based radical Shi'a group and is designated by the United States 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 it is represented by elected officials in the Lebanese parliament. Hezbollah provides support to several Palestinian terrorist organizations and is known to be involved in numerous anti-U.S. and anti-Israeli terrorist attacks.

Lebanese law does not specifically prohibit torture, and security forces have abused detainees and used torture in some instances. Human rights abuses include arbitrary arrests and unlawful deprivation of life. Although the law prohibits it, Lebanese authorities interfere with the privacy of persons regarded as government enemies. Furthermore, non-Lebanese and militia forces operating outside government authority

frequently violate citizens' privacy rights, use informer networks, and monitor telephones to obtain information.

Americans have been the targets of numerous terrorist attacks in Lebanon. Furthermore, Palestinian groups hostile to the Lebanese government and the United States operate largely autonomously inside refugee camps in Lebanon. A travel warning issued by the U.S. Department of State in April 2011 continues to advise U.S. citizens to avoid travel to Lebanon because the threat of anti-Western terrorist activity continues to exist.

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 enjoys a strong export position with Lebanon and is its fifth largest source of imported goods. Since the lifting of passport restrictions in 1997, a number of large U.S. companies have opened branch or regional offices in Lebanon. More than 160 offices representing U.S. businesses operate in Lebanon. 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.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁴ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government's case. Because no one has

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁵ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The “clearly consistent with the national interest” standard compels resolution of doubts about an applicant’s suitability for access to classified information in favor of the Government.⁶

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

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

The relevant foreign influence disqualifying conditions under AG ¶ 7 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.

Applicant’s wife and two children are dual-U.S.-Lebanese citizens. He also has close ties to his mother, two sisters, and three brothers-in-law who are citizen-residents of Lebanon. One brother and one brother-in-law are dual citizens living in the United

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

States. One brother is a Canadian citizen, living in Canada. Applicant is in touch with his relatives in Lebanon from twice per month to once every few months. He has more frequent contact, about three times per week, with his brother-in-law who lives in the United States. He has visited his family in Lebanon three times in the past seven years. Applicant shares financial support of his mother with his siblings, and provides his mother with about \$500 per month. Lebanon has a past history of being strongly influenced by Syria, a U.S.-designated "state sponsor of terrorism." Lebanon also recognizes Hezbollah, a U.S.-designated foreign terrorist organization, as a legitimate political party. Hezbollah provides support to terrorist organizations. Applicant's family ties to citizens of Lebanon represent a heightened risk of foreign influence. Disqualifying conditions AG ¶ 7(a) and (b) apply.

The foreign influence guideline includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

(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 United States; and

(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.

The mere possession of close family ties to persons 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 frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence. Here, Applicant has close ties to his mother, siblings, and in-laws in Lebanon. He contributes, along with his siblings, to his mother's financial support. His conduct indicates his affection and sense of obligation to his family. Moreover, Applicant's family lives in Lebanon, a country where human rights abuses occur, terrorists operate, and the government recognizes as legitimate a foreign terrorist organization. Given these circumstances, mitigating condition AG ¶ 8 (a) does not apply.

However, other factors support mitigation. Applicant has resided permanently in the United States for more than 20 years. He has been a U.S. citizen since 1994. His wife and two teenaged children also reside here. Along with the home he owns in the United States, he has substantial net worth in U.S. stocks, bank accounts, and 401(k)

accounts. Moreover, he has held a top secret clearance with special accesses since 2003, without incident.

The nature and quality of Applicant's work for federal agencies since 2000 is of considerable significance. He volunteered for duty in combat zones in 2005 and in 2006. He has provided valuable middle-east language and cultural expertise, which contributed substantially to the U.S. mission. He submitted letters from numerous superiors who described the critical nature and outstanding quality of his contribution to sensitive missions in these war zones. His former supervisor commented that Applicant was aware of the sensitive nature of the work, and handled classified information with discretion.

The Appeal Board has noted the value of a track record of complying with security regulations in dangerous, high-risk circumstances.⁷ In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I find Applicant provided evidence of his commitment to the United States in dangerous, high-risk circumstances during his combat service in Iraq. He also has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) applies.

⁸ ISCR Case No. 07-06030 at 3-4 (App. Bd., June 19, 2008).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant 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) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

I have considered Applicant's close foreign family ties because they can raise security concerns related to the potential for exploitation. Here, Applicant's foreign family members in Lebanon raise such concerns. The nature of a 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. That risk is greater where the country is associated with a risk of terrorism, as in this case.

However, I have also weighed Applicant's service in Iraq. He has provided the United States with significant contributions, under dangerous conditions, in support of the national defense. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."⁸ Because of his family ties to Lebanon, Applicant has a heavy burden of persuasion. However, he meets his burden through his willingness to place himself in harm's way in service to the United States, and demonstrates that his family does not pose an unacceptable security risk.

⁹ ISCR Case No. 04-02511 at 4 (App. Bd., Mar. 20, 2007)

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a – 1.c:	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 continue Applicant's access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge