



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



In the matter of:)
)
) ISCR Case No. 11-00140
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: Farhan Thura, Esq.

06/12/2012

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized citizen of the United States originally from Syria and Lebanon, maintains close familial relationships with family members who are Lebanese citizens. However, the record establishes that in the years Applicant has lived in the United States, he has cultivated a network of family and friends and accumulated significant U.S.-based assets that firmly root him to the United States, thereby mitigating the foreign influence concerns raised in this case. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order (EO) and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

January 3, 2012, notifying Applicant that it was unable to find that it is clearly consistent with the national interest to deny his access to classified information. DOHA recommended that his case be submitted to an administrative judge for a determination whether to revoke his clearance. The SOR detailed the reasons for the action under Guideline B (foreign influence).

Applicant answered the SOR on January 23, 2012, and requested a hearing. The case was assigned to me on March 23, 2012. The hearing proceeded as scheduled on May 22, 2012. Department Counsel offered Government's Exhibits (GE) 1 and 2, which were admitted. Applicant testified and presented one witness. Applicant's Exhibits (AE) A through K were admitted without objection. I received the transcript (Tr.) on May 31, 2012.

Evidentiary Rulings

Request for Administrative Notice

At hearing, Department Counsel requested that I take administrative notice of certain facts about Lebanon, Syria, and Saudi Arabia. The administrative notice summary regarding these countries is appended to the record as Hearing Exhibit (HE) 1 with the attached documents. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 36-year-old computer analyst, originally from Syria. When he was 16 years old, he moved with his family to Lebanon (his mother's place of birth). He is employed by a defense contractor that frequently works on projects for the federal government, requiring access to classified information. Applicant completed his undergraduate education in Lebanon. He immigrated to the United States in 2000 to attend graduate school. Applicant worked for his former employer, who sponsored Applicant's work visa and citizenship application, since September 2000. He became a naturalized citizen of the United States in 2010. (GE 1) He has been employed with a new company since January 2012. (Tr. 34)

Applicant's mother is a citizen and resident of Lebanon. A retired housewife, she supports herself using the proceeds of her pension and the money left to her by her deceased husband. She has been living with Applicant in his home for approximately six or seven months. Applicant applied for a green card for his mother so that she may become a permanent resident of the United States. She is awaiting an interview to begin the process of U.S. citizenship. (AE E) Applicant advised her to renounce her Lebanese citizenship. She does not rely on Applicant for financial support. When Applicant's mother is in Lebanon, he maintains contact with his mother weekly, by

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

telephone. Applicant visited his mother in Lebanon in 2008 and 2009 for family celebrations.

Applicant has two sisters who are dual citizens of Lebanon and Syria. He maintains contact with his sisters by telephone once a month and by email perhaps once a week. One sister is a Lebanese citizen with Swedish and Syrian citizenship. Both sisters were born in Syria. Syrian citizens by birth are Syrian citizens forever. One sister married a Swedish man of Lebanese descent. She is divorced, and when she remarried, she moved to Saudi Arabia, where her husband works for a company with strong ties to the United States. She and her husband live in an American compound in Saudi Arabia. (GE 2) Applicant's second sister, R, is a citizen of both Lebanon and Syria. She resides in Qatar, Doha. She is married to a Lebanese man. She works at home. (Tr. 39) Applicant saw his sisters in 2009 in Lebanon for a wedding (Tr. 66)

In 1993, when Applicant's father died, he bequeathed to Applicant, his two sisters, and their mother, ownership of a two-level house with storage, shops and warehouses underneath that in 2010, Applicant believed to be valued at \$90,000. (GE 2) However, Applicant submitted information that the Syrian government took the property by force, and rented it to the Department of Public Works. Applicant believes the rent is about \$40 a month. His mother made one attempt years ago to collect the rent, but was unable to do so. Applicant has not seen the property in 14 years, but current news reports reveal that the city where the property is located has been under attack for more than 14 months. The news report dated May 9, 2012, stated that not a single building seems to have escaped the government's ferocious assault. (AE H). Applicant is not sure given the violence in the area that the house is still standing. Many neighborhoods are desolate and destroyed. "Large areas of the city lie in ruins, a chilling testament to the indiscriminate violence unleashed by the government against the opposition strongholds". (AE I) Applicant believes that the property has little value. People are fleeing the country and no one is interested in buying any property. (Tr. 43) Applicant has no interest in the property.

In February 2008, Applicant married his wife, a permanent resident of the United States, who is originally from Saudi Arabia. (AE C) Applicant and his wife have a 4-month-old son, who is a U.S. citizen by birth. (AE D) Applicant has no intention of obtaining (dual) citizenship for his child. Applicant's wife and his in-laws are dual citizens of Canada and Lebanon. Applicant's parents-in-law and four sisters-in-law are dual citizens of Canada and Lebanon. They have lived in Canada for about 20 years. Applicant and his wife visit her family in Canada every year. Applicant always reports his contacts with foreign family members to his facility security officer.

In the years Applicant has lived in the United States, he has accumulated more than \$600,000 assets, including his home and investment property. He has no income from the property in Syria. He has established a home for his wife and son. He has no intention of returning to Syria or to Lebanon. There is no evidence that Applicant has revealed to any family members the nature of his work or about applying for a security clearance.

Before submitting his application for security clearance, Applicant's facility security officer, (FSO) vetted him carefully. Given the specialized and sensitive nature of the firm's work, the firm has developed a strong security culture. The FSO, who is an executive assistant to the company, testified at the hearing on Applicant's behalf. Applicant and the FSO have known each other for approximately nine years. (Tr. 20) She described Applicant as a compassionate, driven, honest, and forthcoming individual. She knows from discussions with Applicant that he has no desire to return to Syria, his place of birth. When he became a U.S. citizen, Applicant invalidated his Syrian passport by cutting off the corners in his FSO's presence. (Tr. 23) The FSO advised Applicant not to directly return the passport to the Syrian Embassy for fear of being flagged for possible espionage. (Tr. 24)

The FSO stated that Applicant has followed the rules and regulations of the National Industrial Security Program and its reporting requirements. She also attests that Applicant has been appropriately trained and briefed on his security duties and that he is keenly aware of the responsibilities that accompany holding a security clearance.

Applicant's current supervisor describes him as a person who plays a key role in shaping the company's information technology offerings for federal government customers. Applicant's work is of exceptional quality. He has made significant contributions to the company and customers by developing new solutions, architectures and supporting vendor partnerships. Applicant's supervisor describes him as having exceptional character. He consistently meets his commitments and conducts himself forthrightly. (AE K)

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. During the period 1992 to 2005, post-war reconstruction in Lebanon has included social and political instability, economic uncertainty, problems with basic infrastructure, and clashes between Israeli military forces and Hezbollah. 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.

Syria maintained troops in Lebanon from 1976 until 2005. Even though Syria withdrew its military forces from Lebanon in April 2006, it maintains a covert intelligence presence in Lebanon and offers support for and smuggles arms to Hezbollah and Palestinian terrorist groups operating in Lebanon. The Lebanese government's inability to exercise authoritative control in the Hezbollah-dominated south of Lebanon and

inside Palestinian-controlled refugee camps enables terrorists to operate freely in Lebanon. Hezbollah's continued attacks on Israel continue to create instability in the region.

On May 9, 2008, the Secretary of State condemned the use of violence by illegitimate armed groups in Lebanon, and stated the legitimate authority of the Lebanese government and the institutions of the Lebanese state were being undermined by Hezbollah and its allies, backed by Syria and Iran. On August 13, 2008, the States Department issued a condemnation of a terror attack in Lebanon, and on September 10, 2008, its issued a condemnation of a car bomb attack that killed a ranking official of a Lebanese political party.

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.

Syria

Syria is ruled by an authoritarian regime. Syria is designated by the U.S. Department of State as State Sponsor of Terrorism. Syria provides safe haven as well as political support to a number of designated Palestinian terrorist groups. The operational leadership of many of these groups is headquartered or sheltered in Syria, and the Syrian government allows such groups to receive and ship goods, including weapons, in and out of the country. It also provides diplomatic, political and material support to Hezbollah in Lebanon and allows Iran to supply this organization with weapons. Syria has maintained its ties with its strategic ally, and fellow state sponsor of terrorism, Iran.

President Obama has continued the national emergency designation concerning Syria's government in supporting terrorism, continuing occupation of Lebanon and international efforts with respect to the stabilization and reconstruction of Iraq. These actions constituted an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

Dual citizens and U.S. citizens of Syrian origin may be subject to compulsory military service in Syria, unless they receive a temporary or permanent exemption from such service prior to their entry into Syria. The Syrian government conducts intense physical and electronic surveillance of both Syrian citizens and foreign visitors. U.S. citizens visiting Syria should be aware that any encounter with a Syrian citizen would be subject to scrutiny by the General Intelligence Directorate (GID) or other security services.

On December 21, 2011, the Office of the White House Press Secretary issued a statement that the United States is deeply disturbed by credible reports that the Assad regime continues to indiscriminately kill scores of civilians and army defectors, while destroying home and shops and arresting protestors without due process.

Saudi Arabia

The central institution of the Saudi Arabian Government is the monarchy ruled by the Al Saud family and a king chosen by and from the family; the king rules through royal decrees. Islamic law is the basis of the authority of the country's conservative customs and social practices. Despite generally good relations, the United States remains concerned about human rights conditions in Saudi Arabia. The United States and Saudi Arabia share a common concern about regional security, oil exports and imports, and sustainable development. However, Saudi Arabia's relations with the United States were strained after the September 11, 2001 terrorist attacks.

During 2003 and 2004, terrorists and suicide bombers have kidnapped or killed Americans and have attacked the U.S. consulate in Jeddah, killing five consulate employees. A travel warning is in effect for Saudi Arabia due to concerns about the possibility of terrorist activity directed against American citizens and interests. Individuals and organizations based in Saudi Arabia have been designated by the U.S. Government as providing financial and material support to Al-Qaeda and other terrorist groups. Saudi and U.S. officials appear confident that Al-Qaeda's capability to launch attacks inside the kingdom has been seriously degraded. The Saudi government continues to build its counterterrorism capacity and efforts to counter extremist ideology. On March 24, 2010, Saudi officials announced that since November 2009, the Saudi government has arrested more than 100 Al-Qaeda suspects accused of planning attacks against the government and oil installations. On November 26, 2010, Saudi officials announced that 149 Al-Qaeda suspects had been arrested since April; the suspects were planning to poison Saudi officials and journalists and to finance operations by robbing banks and companies.

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 to be 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, administrative judges apply the guidelines 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.

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 the 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 EO 10865 provides that adverse 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

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

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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion; 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 a heightened risk of foreign influence or exploitation.

Each of these disqualifying conditions applies. Applicant's wife is a dual citizen of Canada and Lebanon. His in-laws are dual citizens of Canada and Lebanon. Applicant's four sisters-in-law are dual citizens of Canada and Lebanon. Applicant's mother is a citizen and resident of Lebanon. Applicant's two sisters are citizens of Lebanon. One sister lives in Lebanon and the other in Saudi Arabia. Applicant and his wife maintain close relationships with family members. The mere possession of close ties with family members living in these countries is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The countries in question also must be considered. In particular, the nature of their government, their relationships with the United States, and their human rights records are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Applicant's mother and sisters are citizens and residents of Lebanon, a country with historically good relations with the United States, but also one occupied by terrorist groups and credited with a poor human rights record. Applicant holds a property interest in a piece of commercial real estate that also increases his ties to the country of Syria, and provides another potential source of vulnerability. Accordingly, I find a heightened risk exists with respect to Applicant's relationships with foreign family members and foreign financial interests.

The guideline notes several conditions that could mitigate the foreign influence concerns under AG ¶ 8. Three are potentially applicable in this case:

(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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Mitigating condition AG ¶ 8(b) applies. Family contacts and ties with persons in a foreign country are not automatically disqualifying, but require an applicant to present evidence in mitigation and extenuation that he qualifies for access to classified information. Applicant's relationships with his foreign family members cannot be considered casual or infrequent; however, none of Applicant's family members are associated with or dependent on the governments of the countries at issue. It still could be unlikely that he would be put in the position of having to choose between the interests of his foreign relatives and the interests of the United States.

Applicant was born in Syria and left at age 16. He lived in Lebanon with his mother. He did not develop strong ties to either Syria or Lebanon during his time in either country. He has no intention to return to either country as he has become quite successful in the United States. He is a homeowner and a new father. He wants to pursue his chosen career in the field of information technology. He has received an endorsement from his former FSO.

Applicant's wife holds dual citizenship with Canada and Lebanon. She is a permanent resident of the United States and intends to become a U.S. citizen. Her parents have lived in Canada for more than 20 years. They have no close ties with Lebanon.

Applicant's mother is applying for permanent residence in the United States and is awaiting her visa interview. She will apply for U.S. citizenship once eligible. Applicant's one sister lives in Saudi Arabia with her husband who is working for a large company. They live in an American compound. Applicant has no significant ties with Saudi Arabia.

Applicant has lived in the United States since 2000. He is a loyal U.S. citizen. He has amassed significant financial assets in the United States. Although his interest in the Syrian property is not insignificant, it is not material to his overall net worth. The property does not provide a consistent source of income that is relied on by Applicant, his mother, or his sisters. Also, the property may not have much value due to the ongoing conflict in Syria.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility 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). Under AG ¶ 2(c), 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.

Some circumstances weigh against Applicant in the whole-person analysis. His mother, sisters, wife, and his in-laws are citizens of Lebanon. Applicant has strong ties of affection and or obligation to his mother and family. His family could be vulnerable to coercion or exploitation by a foreign power or terrorist organization doing business in Lebanon. Additionally, Applicant inherited property in Syria upon the death of his father.

On the other hand, Applicant credibly asserted his loyalty to the United States and his desire to help the United States. Applicant lived in Lebanon with his mother because he was a minor under the control of his parent. He attended undergraduate school in Lebanon, but moved to the United States to continue his education and to pursue a career. He is married and has a son who is a U.S. citizen. His mother plans to become a U.S. citizen. His in-laws live in Canada and have no apparent connection with Lebanon. The property in Syria is of no significance to Applicant. He is not even sure the property is still standing due to the ongoing conflict in the region.

I considered the potentially disqualifying and mitigating conditions, as well as the whole-person factors, in light of all the facts and circumstances surrounding this case. Applicant is a mature, forthright, and educated man. His testimony was candid and well-prepared. He came to this country in 2000 from Lebanon and became a citizen in 2010. He obtained a graduate degree and has been successful in the information technology field. Applicant has deep-rooted relationships in the United States. He has built a life with his wife and son in the United States. These relationships root Applicant to the United States in a way that leads me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States.

Applicant has complied with agency requirements for reporting travel and contacts overseas. He has visited Lebanon on two occasions for family celebrations. When his mother becomes a U.S. citizen and resides permanently in the United States, Applicant has no reason to return to Lebanon. He is adamant that he would not go to Syria. He wants to pursue his chosen career in the United States. Applicant's sister lives in Saudi Arabia in an American compound. He has no connection to Saudi Arabia.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). I have incorporated my comments into the analysis of the applicable mitigating conditions above. The evidence supports a finding that Applicant does not have divided loyalties between the United States,

Lebanon, Syria, or Saudi Arabia. Based on the evidence, I conclude that Applicant has mitigated the Guideline B concerns raised in this case.

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.g: For Applicant

Conclusion

In light of all of the circumstances presented in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility to classified information is granted.

Noreen A. Lynch
Administrative Judge