



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-07863
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: Barry Sax, Esquire

August 29, 2013

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 22, 2010. On November 14, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and F for Applicant. 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 adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 29, 2012. He answered the SOR in writing on January 16, 2013, and requested a hearing before an Administrative Judge. DOHA received the request on January 25, 2013, and I received the case assignment on March 29, 2013. DOHA issued a notice of hearing on April 2, 2013, and I convened the hearing as scheduled on May 15, 2013. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant

testified on his own behalf and submitted Exhibits (AppXs) A through C, which were received without objection. DOHA received the transcript of the hearing (TR) on May 28, 2013. I granted Applicant's request to keep the record open until June 12, 2013, to submit additional matters. On June 12, 2013, he submitted Post Hearing Exhibits (PHXs) A through H, which were received without objection. The record closed on June 13, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Lebanon. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a., 1.c., 1.e., 2.a.~2.h., and 2.k.~2.m. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.b., 1.d., 1.f., 2.i. and 2.j. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

### **Guideline B - Foreign Influence**

Applicant is a native-born American. (TR at page 34 line 12 to page 37 line 22.) He was educated in the United States; and except for vacations and overseas job requirements, has lived his whole life here. (*Id.*)

1.a. Applicant met his wife in Lebanon. It was love at first sight. (TR at page 37 line 23 to page 39 line 9, and at page 42 line 18 to page 43 line 7.) She is a dual national of the United States and of Lebanon. (GX 1 at pages 20~21.) They "have been happily married for 15 years . . . [and] have four children . . . [who] are growing up Americans." (TR at page 43 lines 9~18.)

1.b. Applicant's mother-in-law and father-in-law reside in the United States and are in the process of becoming U.S. citizens. (TR at page 43 line 19 to page 44 line 15.) His father-in-law is a retired tour guide. (TR at page 49 lines 2~12.)

1.c. and 1.d. Applicant has two brothers-in-law and one sister-in-law. The younger of the two brothers-in-law "has a Green Card," and is on the path to U.S. citizenship. (TR at page 44 line 16 to page 46 line 3.) His other brother-in-law, who is a citizen of and resides in Lebanon, is an "Architectural Engineer with a Master's Degree." (TR at page 46 line 3 to page 48 line 6.) His sister-in-law, who is also a citizen of and

resides in Lebanon, “is a Pharmacist. . . . She has her own little Pharmacy in the neighborhood where they grew up.” (TR at page 48 lines 7~16.) His Lebanese in-laws “have no political affiliations”: and do not know Applicant has a security clearance, nor what he does for a living. (TR at page 48 line 19 to page 49 line 1, and at page 57 line 1 to page 58 line 21.)

1.e. and 1.f. Applicant has a \$2,000 bank account in Lebanon, which he is “in the process of trying to close, “a little emergency fund” for when he travels there. (TR at page 50 line 2 to page 51 line 14.) He has traveled to Lebanon three times in the last ten years, in 2006, from 2008~2009, and in 2011. (TR at page 51 line 19 to page 52 line 13.)

I also take administrative notice of the following facts. Lebanon became an independent country in 1943, however Syria has long influenced its foreign and internal policy. Hizballah, a Lebanese based radical group, takes its ideological inspiration from Iran, and remains a significant threat to the stability of Lebanon. In addition to Hizballah, several terrorist organizations remain active in Lebanon. U.S. citizens have been the target of numerous terrorist attacks in Lebanon in the past, and the threat of anti-Western terrorism continues to exist there.

#### **Guideline F - Financial Considerations**

Applicant, who owned several real estate properties, got caught up in the radical decline of the housing market in 2008. (TR at page 62 line 13 to page 71 line 10.) To keep up with his mortgage payments, as his rentals were not covering his costs, he “basically robbed Peter to pay Paul as long as . . . [he] could.” (TR at page 70 lines 12~20.)

2.m. In 2011, Applicant filed for the protection of a Chapter 7 bankruptcy, but “then . . . [he] realized that it wasn’t the right thing to do. So, . . . [he] did not complete the process.” (TR at page 72 line 12 to page 73 line 1, and AppX B at page 2.) As a result, his significant past-due indebtedness was not discharged and remains of concern to the Government.

2.a. Applicant is indebted to Creditor A for a past-due debt in the amount of about \$20,919. (PHX F at pages 48~49.) Applicant avers that he expects this admitted debt “to be resolved in the near term,” but he has not yet done so. (PHX H at page 2, and TR at page 73 line 2 to page 76 line 8.) I find that this debt is still outstanding.

2.b. Applicant is indebted to Creditor B for a past-due debt in the amount of about \$28,369. (PHX F at page 37.) Applicant also avers that he expects this admitted debt “to be resolved in the near term,” but he has not yet done so. (PHX H at page 2, and TR at page 76 lines 9~18.) I find that this debt is still outstanding.

2.c. Applicant is allegedly indebted to Creditor C for a past-due debt in the amount of about \$43. This debt has been paid, as evidenced by Applicant’s most

recent June 2013 credit report. (PHX F at page 31, and TR at page 77 line 7 to page 78 line 25.) I find that this debt has been paid.

2.d. Applicant is indebted to Creditor D for a past-due debt in the amount of about \$282. (GX 4 at page 14.) Applicant avers that he expects this admitted debt “to be resolved in the near term,” but he has not yet done so. (PHX H at page 2, and TR at page 79 lines 1~15.) I find that this debt is still outstanding.

2.e. Applicant is allegedly indebted to Creditor E for a past-due debt in the amount of about \$75. This debt was “reported in error” as past due, as evidenced by a letter from the creditor. (AppX B at page 4, and TR at page 79 line 16 to page 80 line 13.) I find that this debt has been resolved in Applicant’s favor.

2.f. Applicant is allegedly indebted to Creditor F for a past-due real estate debt in the amount of about \$70,737. This debt has been cancelled by the creditor, as evidenced by a Form 1099-C from the creditor. (AppX B at page 5, C at page 1, and TR at page 80 line 16 to page 83 line 2.) I find that Applicant no longer owes this debt.

2.g. Applicant is indebted to Creditor G for a past-due debt in the amount of about \$5,393. (GX 7 at page 2.) Applicant avers that he expects this admitted debt “to be resolved in the near term,” but he has not yet done so. (PHX H at page 2, and TR at page 83 lines 6~12.) I find that this debt is still outstanding.

2.h. Applicant is indebted to Creditor H for a past-due debt in the amount of about \$11,071. (GX 7 at page 2.) Applicant avers that he expects this admitted debt “to be resolved in the near term,” but he has not yet done so. (PHX H at page 2, and TR at page 83 lines 6~12.) I find that this debt is still outstanding.

2.i. Applicant is indebted to Creditor I for a past-due debt in the amount of about \$211,000. (PHX F at page 46.) Applicant avers that “a final resolution of . . . [this mortgage debt] is imminent” but he has offered nothing further. (PHX H at page 2, and TR at page 83 line 12 to page 85 line 20.) I find that this debt is still outstanding.

2.j. Applicant is allegedly indebted to Creditor J for a past-due real estate debt in the amount of about \$600,000. This debt has been cancelled by the creditor, as evidenced by a Form 1099-C from the creditor. (GX 3 at pages 337~339, and TR at page 85 line 1 to page 89 line 1.) I find that Applicant no longer owes this debt.

2.k. Applicant is allegedly indebted to Creditor K for a past-due real estate debt in the amount of about \$475,000. The creditor has reacquired this real estate, as evidenced by a Form 1099-A from the creditor. (AppX B at page 9, and TR at page 89 lines 2~11.) I find that Applicant no longer owes this debt.

2.l. Applicant is allegedly indebted to Creditor L for a past-due real estate debt in the amount of about \$733,000. This debt has been cancelled by the creditor, as

evidenced by a Form 1099-C from the creditor. (AppX B at page 8, and TR at page 89 line 12 to page 73 line 1.) I find that Applicant no longer owes this debt.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to obtaining 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 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B - Foreign Influence**

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraph 7(a) is applicable: *“contacts with a foreign family member . . . 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.”* Applicant’s wife is a dual national with Lebanon, and his in-laws are citizens of Lebanon. This is countered, however, by the first mitigating condition, as *“the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.”* Applicant’s wife of 15 years is well settled with her family in the United States. Applicant’s father-in-law, mother-in-law and a brother-in-law live in the United States. They are also on the road for U.S. citizenship. His brother-in-law and sister-in-law, who do reside in Lebanon, have no connection with the Lebanese government, nor do they know exactly what Applicant does for a living.

Furthermore, I find the disqualifying condition found in Paragraph 7(e) is not applicable under the facts of this case. I do not find that a \$2,000 bank account in Lebanon, which Applicant is trying to close, to be a *“substantial . . . financial, or property interest”* in Lebanon.

### **Guideline F - Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 18:

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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant has significant past-due debts, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant’s past-due indebtedness can be attributed to the crash of the housing market in 2008, he still has about \$277,000 in past due debt that he must address.

### **Whole-Person Concept**

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. 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.

The Administrative Judge should also 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.”

Applicant has the unqualified support of those who know him in the work place. (PHXs A~D.) I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his alleged Financial Considerations.

### **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

Subparagraph 1.a: For Applicant

Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	Against Applicant
Subparagraph 2.j:	For Applicant
Subparagraph 2.k:	For Applicant
Subparagraph 2.l:	For Applicant
Subparagraph 2.m:	Against Applicant



## **Conclusion**

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

Richard A. Cefola  
Administrative Judge