



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



In the matter of:

ISCR Case No. 14-02141

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

11/17/2016

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, I conclude that Applicant provided adequate information to mitigate security concerns for foreign influence under Guideline B. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 3, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance for his employment with a defense contractor. (Item 3) After an interview conducted by a security investigator from the Office of Personnel Management (OPM) on March 12, 2014 (PSI), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On August 8, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on September 6, 2014. He admitted the one SOR allegation that his brother and sister are citizens and residents of Lebanon. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on October 27, 2016. Applicant received a complete file of relevant material (FORM) on April 11, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely responded to the FORM providing additional information concerning his siblings. I was assigned the case on September 27, 2016.

### **Findings of Fact**

After a thorough review of the case file, I make the following findings of fact. Applicant was born in Lebanon, received his bachelor's degree from a university in Lebanon in August 1982, and arrived in the United States in January 1983 on a student visa to pursue graduate studies. He received his master's degree in 1985 and his doctorate in December 1988 from United States universities. In August 1988, he married his wife who was also studying at a United States university on a student visa. Applicant became a United States citizen in August 1999, and his wife became a United States citizen in August 2001. They have three grown children attending college or graduate schools in the United States. He has been employed as an aeronautical engineer by a defense contractor since 2002. All of his financial assets are in the United States. He has no financial interests in Lebanon. Applicant stated that he chose to become a citizen of the United States because his loyalties are to the United States. (Item 3, e-QIP)

The SOR alleges that Applicant's brother and sister are citizens and residents of Lebanon. In 2005, similar facts were alleged as a security concern. At that time, it was alleged that his mother and father were residents and citizens of Lebanon, that he monetarily helped support his mother and father, that he made five trips to Lebanon between 1985 and 2003 to visit his family, and that he was unsure if he would bear arms against Lebanon in a conflict between Lebanon and the United States. Applicant admitted these allegations. The allegations were considered by an Administrative Judge, who determined, after a hearing, that Applicant presented sufficient facts to mitigate the foreign influence security concerns. Applicant was granted eligibility for access to classified information. (ISCR Case No. 03-26535, AJ Heiny, September 23, 2005)

The security concern facts of the case have changed since 2005. In the instant case, there is only one allegation of foreign influence, that his brother and sister are citizens and residents of Lebanon. His parents passed away so he no longer supports them. Since 2003, he visited Lebanon twice, in 2008 and 2012. His brother in Lebanon is 61 years old and unemployed. He talks to him about once a month by telephone. He

last saw his brother during his last visit to Lebanon in 2012. His sister is 66 years old and a housewife whom he talks to monthly by telephone. He last saw her on his visit in 2012. Applicant also has a 63-year-old brother who is a citizen and resident of France. There is no security allegation against Applicant for his relationship with this brother.

I take administrative notice that Lebanon became an independent country in November 1943. From 1975 until 1991, the country experienced civil war followed by years of political and social instability. Its neighbor, Syria, used its military forces to be a major influence on Lebanon's foreign and internal policies from 1976 until 2005. Syria withdrew its forces in 2004, and the Lebanon-based Hizballah militia and Israel continued to engage in attacks and counterattacks against each other and fought a brief war in 2006. Hizballah takes its ideological inspiration from the Iran revolution and is closely aligned with Syria. It was designated a Foreign Terrorist Organization in October 1997. It has a strong influence in Lebanon, and is the most dangerous and prominent terrorist group in Lebanon. There are various other terrorist groups operating in Lebanon. Syria, designated by the United States in 1979 as a sponsor of terrorism, continued to provide weapons and political support to Hizballah. This affected the stability in the region.

Lebanon's security situation deteriorated in 2014 as a result of the spillover from violence in Syria. Lebanon experienced increased violence in 2013-2014 as a result of an increase in refugees from Syria. Lebanon is a member of the Global Coalition to counter ISIL. The Lebanese Armed Forces seek to limit ISIL's threat at home, including the flow of foreign fighters both to and from Syria.

The most significant human rights violations in Lebanon are torture and abuse by security forces; harsh prison and detention center conditions; limitations on freedom of movement for Syrian refugees; arbitrary arrest and detention; lengthy pre-trial detentions; a judicial system subject to political pressure; long delays in trials; violation of citizen privacy rights; restrictions on freedom of speech and the press; official corruption and lack of official transparency; widespread violence against women; societal, legal and economic discrimination against women; and migrant and child labor abuses. The U.S. has issued a travel warning for Lebanon based on the ongoing safety and security concerns and the potential for death and injury due to the frequency of terrorist bombing attacks throughout the country. (Item 7, Administrative Notice request and attached documents)

## **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 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 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 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 for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline B: 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 the 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 consideration 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 ¶ 6)

Applicant's two siblings are citizens and residents of Lebanon. Applicant has monthly telephone contact with them. He sees them on his trips to Lebanon, the last one in 2012. Applicant's contact with family members in Lebanon raises the following security concerns under Foreign Influence Disqualifying Conditions under AG ¶ 7:

(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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. 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 is at risk of coercion, persuasion, or duress. Lebanon's present security situation and poor human rights record places a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant based on his siblings who are citizens and residents of Lebanon.

I considered Foreign Influence Mitigating Conditions under AG ¶ 8:

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Mitigating condition AG 8(c) does not apply. There is a rebuttable presumption that a person has ties of affection for, or obligation to, his immediate family members. Applicant has not rebutted this presumption. He has weekly or monthly telephone conversations with his siblings and occasional visits to Lebanon.<sup>1</sup>

Mitigating conditions AG ¶ 8(a) and 8(b) apply. Since 2004, Applicant has made only two trips to Lebanon, in 2008 and 2012. Applicant's sense of obligation to his siblings in Lebanon is minimal at best. Applicant is a citizen of the United States by choice and not by chance and his loyalty is to the United States. Applicant has substantial and longstanding relationships and loyalties in the United States. Applicant received his graduate and professional education in the United States and has worked for the same employer since 2002. He has had access to classified information since 2005 without any known security violations. His wife and children, are all residents and citizens of the United States. His children are attending college or graduate schools in the United States. Applicant is a citizen of the United States by choice so his loyalty is to the United States. His family in Lebanon are not in positions to create a potential conflict of interest between a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the security situation in Lebanon. His brother is unemployed and his sister is a housewife. Neither sibling has any connection to the government or terrorist groups. In balancing all of these factors, I am satisfied that Applicant's family members in Lebanon are not in positions that make it likely that Applicant will be placed in a position of having to choose between the interests of the family members and the interests of the United States. Accordingly, Applicant has met his heavy burden to show that his relationships with his family members in Lebanon are not a security concern. Appellant has mitigated security concerns for foreign influence with the Lebanon.

### **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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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<sup>1</sup> See ISCR Case No. 09-03144 at 2-3 (App Bd. Oct. 22, 2010 (contact once a month is considered to be "frequent" under AG ¶¶ 7 and 8).

(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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant's relationship with his siblings in Lebanon has already been considered for security significance, and Applicant was granted access to classified information. In the 12 years since Applicant was granted eligibility for access to classified information, Applicant and his siblings have not been subject to foreign exploitation, inducement, manipulation, pressure or coercion. Applicant's contact and relationship with his siblings in Lebanon have stayed the same at best and are not close or frequent. His connection and loyalty to the United States is stronger than his connection and relationship to Lebanon. He does not have a conflict of interest between his obligations to his siblings and his duty to protect sensitive and classified information. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated foreign influence security concerns based on his family members in Lebanon. Eligibility for access to classified information is granted.

### **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

## **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge