



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-01740
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/25/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). Applicant has mitigated both guideline concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 1, 2013. On September 24, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 9, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 16, 2016, and the case was assigned to me on January 5, 2017. On January 31, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant's counsel that the hearing was scheduled for March 2, 2017. I convened the hearing as scheduled.

Government Exhibit (GE) 1 was admitted into evidence without objection. I appended Government's request for administrative notice of relevant facts about Jordan and Israel to the record as Hearing Exhibits (HE) 1 and 2. Applicant testified at the hearing and submitted Applicant's Exhibits (AE) A through V, which were admitted without objection. I appended Applicant's hearing exhibit list to the record as HE 3 and her request for administrative notice of relevant facts about Jordan and Israel as HE 4 and 5. At Applicant's request, I left the record open until March 24, 2017. I admitted Applicant's timely post-hearing submissions as AE W through GG, and appended her post-hearing exhibit lists to the record as HE 6 and 7. DOHA received the transcript (Tr.) on March 9, 2017.

SOR Amendment

At hearing, I granted Department Counsel's motion, without objection, to amend the SOR to withdraw paragraphs 2.b through 2.d of the SOR.¹

Findings of Fact²

Applicant is 51 years old and has no children. In 2000, she divorced her Lebanese-national husband of approximately six years.³ Since 2004, she has been cohabiting with her partner, a Jordanian national who became a U.S. citizen in March 2017.⁴ Applicant received her bachelor's degree in 1988 and her master's degree in 1994, both from U.S. universities.⁵ Applicant has worked on various contracts with the same U.S. Government agency since 2012.⁶ From 2004 through 2011, she worked overseas as a consultant for various non-governmental organizations.⁷ This is Applicant's first application for a security clearance.

Applicant is a U.S. citizen by birth. In 1994, she acquired Lebanese citizenship through her marriage. In March 2017, she renounced it.⁸ Applicant initially obtained a Lebanese passport in 1994 for ease of travel with her husband. After they divorced, she renewed the passport several times in order to facilitate official travel to various middle-

¹ Tr. at 57.

² Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer and SCA (GE 1).

³ At hearing, Applicant testified that she was married in 1994 (Tr. at 31-32), which contradicted the 1991 date on her SCA. This discrepancy is noted but not material.

⁴ AE GG.

⁵ See *also* AE K and M.

⁶ See *also* AE T, Z and AA; and Tr. at 14-15, 36-38.

⁷ AE T; Tr. at 17, 38-42.

⁸ AE FF.

eastern countries required by the non-governmental organizations for whom she worked. At that time, her U.S. passport contained Israeli stamps, which restricted or complicated her travel. She last travelled on that passport in 2011 and then surrendered it to her facility security officer (FSO) in 2012. She has travelled exclusively on her U.S. passport since then. Her Lebanese passport expired in 2014, and she has no intent to reacquire it or to obtain any other foreign passport.⁹

Applicant reported on her SCA that her partner co-owned a Jordanian bank account, but did not report that she shared any interest in that bank account. She did acknowledge at hearing, however, that she shared finances with her partner and that she and her partner's bank accounts were intertwined except for their IRA accounts, which they maintain independently.¹⁰ Based on these facts and despite her claims to the contrary,¹¹ Applicant does maintain an interest in her partner's Jordanian bank account (SOR ¶ 1.a). She testified at hearing that her partner closed that bank account, and presented a letter purporting to evince same.¹² Recognizing that there may be words lost in translation, the plain language of that letter does not state, in fact, that the bank account is closed.¹³ Applicant does not maintain her own bank accounts in Jordan or any other foreign country.¹⁴

Applicant maintains regular contact with her partner's siblings, including one brother and his wife who are citizens and residents of Jordan and one sister who is a Jordanian citizen and resident of Israel (SOR ¶1.e). Applicant does not know whether the brother's self-employment involves either the Jordanian government or military. The brother's wife and the sister are not employed by either the Jordanian or Israeli government or military.¹⁵ Applicant and her partner regularly travel to visit her partner's siblings in Jordan and Israel (including on occasions when Applicant was travelling for work), and on at least one occasion, the brother has visited them in the United States. There have also been occasions when the brother and sister have visited Applicant and her partner while they were in either France or Spain visiting her partner's other siblings.¹⁶

Between 2004 and 2011, when Applicant lived and worked overseas, she engaged with numerous foreign nationals professionally. However, she never worked

⁹ See *also* Tr. at 15-18, 34-35, 65; AE A

¹⁰ Tr. at 33; AE H and I

¹¹ See *also* Tr. at 21, 63-64.

¹² Tr. at 21-22, 54-55, 63-64; GE B.

¹³ AE B.

¹⁴ Tr. at 19.

¹⁵ See *also* Tr. at 44-47.

¹⁶ See *also* Tr. at 49-55.

directly with foreign governments or foreign entities, nor does she maintain any current ties to those foreign nationals.¹⁷ Applicant does not currently maintain contact with former business acquaintances or friends who are citizens and residents of Jordan, Lebanon, Egypt, or Israel.¹⁸ Applicant has always complied with reporting requirements concerning her foreign contacts and foreign travel.¹⁹

Applicant returned to live in the United States with her partner in 2011 to be closer to her family and to avail the opportunity for her partner to become a U.S. citizen.²⁰ Applicant's loyalties are not divided.²¹ She and her partner are financially stable, have roots in the United States, and they intend to stay and make their home in the United States.²² Applicant owns two homes in the United States, one since 2011 and one since 2015, in which she maintains equity totaling approximately \$218,000.²³ She earns an annual salary of approximately \$163,000.²⁴ She maintains two IRA accounts worth approximately \$230,000.²⁵ Applicant's mother and two siblings are citizens and residents of the United States.²⁶ Her partner, a humanitarian-aid worker, was previously employed by a U.S. organization and now consults for non-governmental organizations based in Switzerland and Germany.²⁷

A reference who has known Applicant for three years regarded her good judgment and strong character. Applicant's supervisor who interacted with her almost daily for a year found that she was responsible, trustworthy, and demonstrated sound judgment. A friend and former colleague who has known Applicant for many years described her as honest, trustworthy, and as having rock solid integrity. None of Applicant's references expressed doubt about her loyalty to the United States.²⁸

¹⁷ Tr. at 26-27, 39-42, 43, 64.

¹⁸ Tr. at 26-27, 39-42, 48.

¹⁹ Tr. at 27.

²⁰ Tr. at 42.

²¹ Tr. at 25.

²² Tr. at 30.

²³ See also AE W, Y, DD, and EE; and Tr. at 55-56.

²⁴ Tr. at 30 and 55.

²⁵ Tr. at 55; AE BB and CC.

²⁶ Her father passed away in 2016 (Tr. at 43.)

²⁷ Tr. at 26 and 32-33.

²⁸ AE V; Tr. at 29-30

Administrative Notice (Jordan)

I have taken administrative notice of the U.S. Government's pronouncements concerning Jordan, as outlined in HE 1 and 4 and the documents appended thereto, including the following:²⁹

- The Hashemite Kingdom of Jordan (Jordan) is a constitutional monarchy.
- The United States deeply values its long history of cooperation and friendship with Jordan, with which it established diplomatic relations in 1949.
- The Jordanian government continues to infringe on citizens' privacy rights. Impunity remains widespread. The most significant human rights problems are restrictions on the freedom of expression, including detention of journalists, which limited the ability of citizens and media to criticize government policies and officials; citizens' inability change their government peacefully; and mistreatment and allegations of torture by security and government officials.
- The threat of terrorism remains high in Jordan.
- Jordan remains a key U.S. ally in countering terrorism and violent extremist ideology. Jordan's location in a tumultuous region makes it vulnerable to a variety of threats, yet also facilitates its regional leadership in confronting them.
- Jordan has advanced capabilities to detect, deter, and prevent terrorism within its territory, and has remained committed to securing its borders and denying safe haven to terrorists.
- Jordan's interagency anti-extremist strategy remained under-resourced and understaffed, its leaders are reticent to acknowledge domestic radicalization, including self-radicalizations, and its efforts to improve counter-radicalization in schools and mosques were rarely well coordinated across government agencies.

Administrative Notice (Israel)

I have taken administrative notice of the U.S. Government's pronouncements concerning Israel, as outlined in HE 2 and 5 and the documents appended thereto, including the following:

- Israel is a multiparty parliamentary democracy.
- For decades, strong bilateral relations have fueled and reinforced significant U.S. and Israeli policies in many areas, including regional security. Nonetheless, at

²⁹ Contrary to Applicant's counsel's assertion at hearing (Tr. at 12), HE 4 did not contain a request for administrative notice with respect to Egypt.

various point throughout the relationship, U.S. and Israeli polices have diverged on some important issues.

- In the past 30 years, there have been at least three cases in which U.S. Government employees were convicted of disclosing classified information to Israel or of conspiracy to act as an Israeli agent. Reports indicate that concerns regarding possible Israeli espionage persist among U.S. officials.
- Among the most significant human rights problems in Israel are the terrorist attacks targeting civilians, and politically and religiously motivated societal violence.
- While Israel is a committed counterterrorism partner, it faces terrorist threats from Palestinian violent extremists including Hamas, Hizballah, al-Qa'ida and its affiliates, and the Islamic State of Iraq and the Levant (ISIL). It also faces a wave of terrorist attacks committed by individuals with no clear organizational affiliation. Israeli counterterrorism officials said Hamas and other Gaza terrorists made quantitative and qualitative advances in their military capabilities. Israeli officials remained concerned about the terrorist threat posed from Iran and the proliferation of weapons from Syria to terrorist organizations.
- While Israel is not involved in the Global Coalition to counter ISIL, it shares information to help track and stem the flow of foreign terrorist fighters. Israel has a robust legal framework to combat terrorism and promote international legal assistance in the investigation and prosecution of terrorists.
- The U.S. Department of State warns all persons seeking to enter or depart Israel, the West Bank, or Gaza are subject to immigration and security screening, including prolonged questioning and physical searches. Israeli security officials have also on occasion requested access to travelers' personal e-mail accounts or other social media accounts as a condition of entry. In such circumstances, travelers should have no expectation of privacy for any data stored on such devices or in their accounts.³⁰

Policies

"[N]o one has a 'right' to a security clearance."³¹ As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such

³⁰ The document provided in support Item V of HE 2 was incomplete and did not contain any of the facts referenced in HE 2. Therefore, I went to the website address provided to obtain a complete document, which contained a current version of that document, dated February 21, 2017. The facts cited herein are based on facts of the 2017 version that are not materially different from those cited in HE 2.

³¹ Department of the Navy v. Egan, 484 U.S. 518, 528 (1988).

information.”³² The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³³

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”³⁴ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.³⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”³⁶ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.³⁷ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain,

³² Egan at 527.

³³ Exec. Or. 10865 § 2.

³⁴ Exec. Or. 10865 § 7.

³⁵ See Egan, 484 U.S. at 531.

³⁶ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³⁷ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

extenuate, or mitigate the facts.³⁸ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.³⁹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁴⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”⁴¹

Analysis

Guideline C (Foreign Preference)

The security concern under Guideline C (Foreign Preference) is set out in AG ¶ 9, as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Two disqualifying conditions under this guideline are potentially relevant:

AG ¶ 10(a): exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport . . . ; and

AG ¶ 10(b): action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant’s dual citizenship is not, by itself, a disqualifying condition.⁴² Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.”⁴³ Thus, the fact that Applicant obtained and maintained a valid Lebanese passport as a U.S. citizen from approximately 1994 through 2014 establishes AG ¶ 10(b). Applicant has not been in

³⁸ Directive ¶ E3.1.15.

³⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

⁴¹ Egan, 484 U.S. at 531; See also AG ¶ 2(b).

⁴² ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000).

⁴³ ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

possession of a current Lebanese passport since 2012. Therefore, AG ¶ 10 (a)(1) is not established.

Alternatively, in the event that AG ¶ 10(a)(1) is deemed established, I find that it has been mitigated. Applicant submitted a letter to the Lebanese embassy renouncing her Lebanese citizenship, which establishes mitigating condition AG ¶ 11(b).⁴⁴ She surrendered her Lebanese passport to her FSO in 2012, which establishes mitigating condition AE ¶ 11(e).⁴⁵ Further, she had not used that passport since 2011 and it expired in 2014. As the Government conceded at hearing,⁴⁶ the concerns alleged in the SOR under Guideline C are mitigated. Therefore, I resolve SOR ¶ 1.a in favor of Applicant.

Guideline B (Foreign Influence)

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, 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.

Four disqualifying conditions under this guideline are potentially relevant:

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;

AG ¶ 7(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;

⁴⁴ AG ¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship).

⁴⁵ AG ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated).

⁴⁶ Tr. at 66.

AG ¶ 7(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;

AG ¶ 7(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 heightened risk of foreign influence or exploitation.

Applicant's direct ties to her partner's siblings who are citizens and residents of Jordan and Israel establish AG ¶¶ 7(a) and 7(b), and her indirect ties to them through her partner establish AG ¶ 7(d). Although potentially applicable given Applicant's shared interest in her partner's Jordanian bank account, AG ¶ 7(e) is not established since the value of the account is not substantial as compared to the value of her U.S. assets. Given that Applicant does not currently maintain contact with former business acquaintances or friends who are citizens and residents of Jordan, Lebanon, Egypt, or Israel, SOR ¶ 1.f is not established. The human rights and terrorism problems existent in Jordan and Israel, the U.S. Department of State's security concerns with respect to Israel's infringements on privacy rights, and the concerns regarding Israeli espionage against the United States establish a "heightened risk" with respect to both countries.

Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.⁴⁷ Family relationships can involve matters of influence or obligation.⁴⁸ Therefore, Applicant's direct and indirect family ties raise concerns for which she has the burden of persuasion to mitigate.⁴⁹

The following mitigating conditions under this guideline are potentially relevant:

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;

⁴⁷ ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

⁴⁸ ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003).

⁴⁹ ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000) (When an applicant's ties in a foreign country raise a *prima facie* security concern, the applicant is required to present evidence of rebuttal, extenuation, or mitigation sufficient to carry his burden of persuasion that it is "clearly consistent with the national interest" to grant or continue a security clearance on his behalf).

AG ¶ 8(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

AG ¶ 8(f): the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶ 8(a) is not established. Despite the fact that none of her partner's siblings who reside in and are citizens of Jordan or Israel are affiliated with a foreign government or military, Applicant maintains close ties with them directly and through her partner. The countries of Jordan and Israel pose a heightened risk.

AG ¶ 8(b) is established. Applicant attained both of her post-graduate degrees from U.S. universities. While she lived abroad for seven years, her work supported non-governmental organizations. She does not maintain current contact with the foreign nationals with whom she interacted professionally during her years overseas. She and her partner chose to return to live in the United States in order to be closer to Applicant's family and for her partner to become a U.S. citizen. Neither Applicant nor her partner have been employed by or maintain ties with any foreign government or entity. Applicant has accumulated significant U.S. assets, and remains gainfully employed. Her immediate family are all citizens and residents of the United States. Despite their close ties to her partner's siblings in Jordan and Israel, Applicant and her partner's significant financial interests, plans for their future, and loyalties are in the United States. Therefore, I have no doubt that Applicant would resolve any conflict of interest in favor of the United States.

In the event that Applicant's interest in her partner's Jordanian bank account is deemed sufficient to establish AG ¶ 7(e), it is nominal in value as compared to the significant assets that she owns in the United States. AG ¶ 8(f) is established.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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.

I have incorporated my comments under Guidelines B and C in my whole-person analysis, and considered the factors in AG ¶ 2(a). Applicant was candid, sincere, and credible at the hearing. She enjoys a reputation of being responsible and trustworthy, among other notable qualities. I have weighed the disqualifying and mitigating conditions under Guidelines B and C, and evaluated all of the evidence in the context of the whole person and the heightened risk associated with Jordan and Israel. I conclude that Applicant has mitigated the security concerns about her Lebanese passport, family and assets in Jordan and Israel, and her contact with other foreign nationals. Accordingly, I conclude that she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 2.a, 2.e, and 2.f: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge