



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 15-08501
)
 Applicant for Security Clearance)

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: Mark S. Zaid, Esq.

09/27/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 10, 2015. On November 16, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order (EO) 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 DOD on September 1, 2006.

Applicant answered the SOR on December 20, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 9, 2017. The case was assigned to me on May 3, 2017. On July 10, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 11, 2017. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibit (GE) 1 into evidence without objection. Applicant and three witnesses testified, and he submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I appended to the record two letters that Government sent to Applicant as Hearing Exhibit (HE) I, Government's request for administrative notice of relevant facts about Iraq as HE II and Lebanon as HE III, and Applicant's exhibit list as HE IV.¹ DOHA received the transcript (Tr.) on August 18, 2017.

On June 8, 2017, the DOD implemented new AG.² Accordingly, I have applied the June 2017 AG.³ However, I have also considered the September 2006 AG because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

Findings of Fact⁴

Applicant is 54 years old and has been married to his second wife for 23 years.⁵ He and his wife have two children, ages 17 and 16. He received his bachelor's degree in engineering in 1984, master's degree in electrical engineering (EE) in 1985, and doctorate in EE in 1995, all from institutions in the United States. Applicant has been employed by the institute where he obtained his doctorate since 2006. Before that, he was employed for 20 years by a telecommunications company. He was granted a security clearance in 2005.⁶

Applicant immigrated to the United States in 1981, at age 17, as a citizen of Lebanon. In 1990, he became a naturalized U.S. citizen, retaining dual citizenship. His wife maintains dual citizenship with Iraq, where she was born, and the United States (SOR ¶ 1.a). His two children are solely U.S. citizens by birth.⁷

¹ I, *sua sponte*, amended the captions of HE II and HE III to correct the typographical error in the spelling of Applicant's first name.

² On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

³ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

⁴ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer and his SCA (GE 1).

⁵ He was married to his first wife, a U.S. citizen, for just under a year between 1985 and 1986. See *also* Tr. at 95.

⁶ See *also* AE A; Tr. at 72-74, 76, 94.

⁷ See *also* Tr. at 47 (Applicant was not 100% certain whether she renounced her Iraqi citizenship), 48, 75, 95.

Applicant's mother and father, both age 80, are citizens of and residents in Lebanon (SOR ¶ 1.b and 1.c). His mother is a homemaker and his father has been retired for more than 15 years. He was employed as school teacher and then a director of human resources in a department of the Lebanese government, in a position equivalent to a GS-15 in the U.S. government. He took a lump-sum payment when he retired, and does not currently receive any pension or other sums from the Lebanese government.⁸

Applicant has one brother and two sisters. His brother is a U.S. citizen and has lived in the United States for over 34 years. Sister A is a Canadian citizen and has lived in Canada for over 15 years (SOR ¶ 1.d). She is employed as an auditor in a social services department of the Canadian government, in a position equivalent to a GS-8 or GS-9 in the U.S. government (SOR ¶ 1.d). Sister B is a citizen and resident of Lebanon. She is employed in a transportation-related department of the Lebanese government, in a position equivalent to a GS-15 in the U.S. government.⁹

Neither sister's husband nor children are affiliated with the Lebanese or Canadian government or military. Applicant communicates, by phone, text message, or video-chat, daily with his parents, monthly to every few months with Sister A, and quarterly with Sister B. Applicant's wife communicates with Applicant's family monthly by phone or video-chat. Applicant's parents and Sister B reside in city of Beirut.¹⁰

Applicant, his wife, and children visited Lebanon in June 2017 to attend his niece's wedding, visit family, and sightsee. They stayed with his parents. Applicant and his wife last visited Lebanon in 1999 and 2000 to visit family. He visited without his wife at least once in 2002. Applicant's parents visited the United States yearly until 2011, when it became too burdensome due to their age. Sister B accompanied his parents on one such visit, in 2010. Applicant's parents, and Sister B on one occasion, stayed with Applicant or his brother during those visits. For a period not specified in the record, Applicant's parents had U.S. green card status.¹¹

Since becoming a naturalized U.S. citizen, Applicant has not voted in any Lebanese elections, or paid taxes to or received any benefits from the Lebanese government.¹² He and his wife maintain all of their assets in the United States, which are valued at approximately \$5,585,000, including their primary residence and four other properties, life insurance policies, retirement accounts, checking and savings accounts, and personal property. Applicant earns an annual salary of \$380,000.¹³

⁸ See also Tr. at 50-51, 58-60, 64-65, 66-68, 70, 77-89, 96-100, 110.

⁹ See also Tr. at 50-51, 58-60, 64-65, 66-68, 70, 77-89, 96-100, 110.

¹⁰ See also Tr. at 50-51, 58-60, 64-65, 66-68, 70, 77-89, 96-100, 110.

¹¹ Tr. at 59-62, 68-70, 98, 100-101, 109-110, 112-114.

¹² Tr. at 94-95.

¹³ AE F; Tr. at 53-54, 63, 89-92, 102, 103-104.

Applicant's children have attended U.S. public schools. His daughter plans to attend a U.S. university. His children have volunteered in their local community. He has coached soccer, his wife has volunteered with Girl Scouts, and both he and his wife have volunteered for various events at their children's schools. He has also volunteered with his local emergency management office, and currently volunteers with the U.S. Coast Guard Auxiliary.¹⁴

Applicant's wife earned her bachelor's degree in the United States, and has been employed by her current employer, a U.S. pharmaceutical company, for 20 years. She immigrated to the United States immediately following the invasion of Kuwait in 1990, at age 17, with the help of her aunt and uncle, who are U.S. citizens. She has never returned to Iraq nor does she have any future intent to do so, as she has no family members who reside there. Her mother and two brothers reside in the United States, as well as her aunts and uncles and their families.¹⁵

Applicant has received numerous academic and professional awards and honors.¹⁶ His current employer praised his "outstanding" work performance in 2016.¹⁷ His character and work performance are highly regarded by his colleagues.¹⁸

Administrative Notice (Lebanon)

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

- The U.S. State Department warns U.S. citizens to avoid travel to Lebanon because of the threats of terrorism, armed clashes, kidnapping, and outbreaks of violence. It also warns that the U.S. Embassy in Beirut does not offer protection services to U.S. citizens who feel unsafe, and that U.S. citizens will be responsible for arranging their own travel out of Lebanon. This current travel warning has been in effect since February 2017.
- There is potential for death or injury in Lebanon because of terrorist bombings and attacks. Violent extremist groups operate in Lebanon, including U.S. government-designated terrorist organizations Hizballah, ISIL (Da'esh), Al-Nusrah Front (ANF), Hamas, and the Abdullah Azzam Brigades (AAB).

¹⁴ Tr. at 52-53, 92-93, 104-108.

¹⁵ Tr. at 44-49, 54-55, 57-58, 60. Applicant's wife's father passed away five to six years ago.

¹⁶ AE A.

¹⁷ AE B.

¹⁸ AE C and D; Tr. at 13-43.

- U.S. citizens have been the targets of terrorist attacks in Lebanon in the past. The threat of anti-Western terrorist activity persists, as does the risk of death or injury as a non-targeted bystander.
- The Lebanese government cannot guarantee the protection of U.S. citizens against sudden outbreaks of violence, which can occur at any time in Lebanon. Armed clashes have occurred in Beirut.
- On June 12, 2016, an explosion occurred outside a commercial bank in the central Beirut area of Verdun, causing major damage to the building and injuring two people. On November 12, 2015, twin suicide bombings in a commercial and residential area of the Burj al-Barajneh neighborhood in Beirut's southern suburbs killed 43 people and wounded 239 others. On January 21, 2017, Lebanese security forces thwarted an attempted suicide attack at a busy café on Hamra Street in downtown Beirut.
- Kidnapping, whether for ransom, political motives, or family disputes, has occurred in Lebanon. Suspects in kidnappings may have ties to terrorist or criminal organizations. The U.S. government's ability to help U.S. citizens kidnapped or taken hostage is limited.
- The U.S. Department of State considers the threat to U.S. government personnel in Beirut sufficiently serious to require them to live and work under strict security restrictions. The internal security policies of the U.S. Embassy may be adjusted at any time and without advance notice. These practices limit, and may prevent, access by U.S. Embassy officials to certain areas of the country, including especially to parts of metropolitan Beirut.
- Hizballah, with considerable support from Iran, remains the most capable terrorist group in Lebanon. The group is a powerful political actor and enjoyed popular support among Lebanese Shia and a degree of political support from some allied Christians.
- Lebanon does not have a comprehensive counterterrorism law, but several articles of Lebanon's criminal code are used to prosecute acts of terrorism. Implementation of these articles is at times hindered by Lebanon's complex confessional political system and also by Hizballah's restriction of access to attack sites within areas under its control. The cabinet did not consider legislative initiatives that could potentially threaten Hizballah's operations, as the presence of Hizballah and its political allies in the government make the requisite consensus on such actions impossible. State security agencies remained functional in countering non-Hizballah terrorism.

- Lebanon suffered from a number of terrorist incidents in 2016, ranging in type and alleged perpetrator.
- The most significant human-rights abuses occurring in Lebanon during 2016 were torture and abuse by security forces, harsh prison and detention center conditions, and limitations on freedom of movement for Palestinian and Syrian refugees. Other human-rights abuses included lengthy pretrial detention; a judiciary subject to political pressure and long delays in trials; violation of citizens' privacy rights; some restrictions on freedoms of speech and press, including intimidation of journalists; some restrictions on freedom of assembly; harassment of Syrian political activists and other refugees; restrictions on citizens' ability to choose their government; official corruption and lack of transparency; widespread violence against women; societal, legal, and economic discrimination against women; societal and legal discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals; trafficking in persons; discrimination against persons with disabilities; systematic discrimination against Palestinian and other refugees and minority groups; killings related to societal violence; restricted labor rights for and abuse of migrant domestic workers; and child labor. Although the legal structure provides for prosecution and punishment, government officials enjoyed a measure of impunity for human-rights abuses.

Policies

"[N]o one has a 'right' to a security clearance."¹⁹ 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 information."²⁰ 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."²¹

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.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁰ *Egan* at 527.

²¹ EO 10865 § 2.

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.”²² 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.²³ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²⁴ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁵ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁶ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.²⁷

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁸ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²⁹

²² EO 10865 § 7.

²³ See *Egan*, 484 U.S. at 531.

²⁴ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁵ See ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993).

²⁶ Directive ¶ E3.1.15.

²⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁸ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁹ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

Analysis

Guideline B (Foreign Influence)

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 7(a): contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

AG ¶ 7(i): conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's ties to his parents and Sister B, because they are citizens of and residents in Lebanon, and to Sister A, because she is employed by the Canadian government, establish AG ¶ 7(a) and 7(b). His travel to Lebanon in June 2017 establishes AG ¶ 7(i). A heightened risk is associated with the Lebanese government given the significant terrorism and human-rights problems existent there.

The Government did not present evidence in support of a heightened risk associated with the Canadian government. Applicant's wife's dual citizenship with Iraq does not establish any disqualifying condition under Guideline B.

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 United States; and

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(a) is established by the nature of Sister A's employment and the lack of a heightened risk associated with the Canadian government.

Applicant chose to immigrate to the United States over 36 years ago; his wife, over 26 years ago. Their children were born and raised in the United States. After receiving their advanced degrees in the United States, Applicant and his wife have remained gainfully employed and accumulated significant assets here. Neither Applicant's parents nor sisters have any security-significant connection to a foreign military or government. Applicant's brother and his wife's family have been longtime citizens of and residents in the United States. While Applicant has close ties to his parents and Sister B, who are citizens of and residents in Lebanon, his stronger ties are in the United States. Therefore, I conclude that Applicant would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 Guideline B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. He is highly regarded for his professional and academic endeavors and his character. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person and the heightened risk associated with Lebanon, I conclude that Applicant has mitigated the concerns raised by his sister's employment by the Canadian government, and his familial ties to citizens of and residents in Lebanon. Accordingly, I conclude that he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a – 1.e: 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