



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-06923
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Mark S. Zaid, Esq.

11/02/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate alleged foreign influence security concerns. Clearance is granted.

Statement of the Case

On April 6, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to and contact with relatives residing in Lebanon, Kuwait and Israel raised a security concern under the foreign influence guideline. Applicant answered the SOR and requested a hearing.

The hearing was held on May 23, 2017. By agreement of the parties, Applicant and his spouse had a joint hearing because their cases raised similar security concerns. Applicant, his spouse, and a number of colleagues and friends testified at the hearing. The exhibits offered by the parties were admitted into the record without objection.¹

On July 12, 2017, Applicant's counsel requested that the record be re-opened to allow him to submit the decision of another government agency (AGA) reversing its prior

¹ Government Exhibits 1 – 3; Applicant's Exhibits A – P. Correspondence, the notice of hearing, the case management order were marked Appellate Exhibits I – III.

decision denying Applicant eligibility for access to classified information. The AGA's prior adverse decision was based on similar security concerns in this case and evidence about it was already part of the record. Without objection, the record was re-opened and the AGA decision statement was admitted into the record.²

On July 13, 2017, I notified both sides that the case appeared appropriate for summary disposition in Applicant's favor. See *generally* ISCR Case No. 15-03176, n.2 (App. Bd. May 26, 2017) (benchmark that administrative judges can use in deciding whether summary disposition is warranted in a given case). I did so after considering the entire record evidence, including the newly submitted evidence and the parties' respective positions.³ Department Counsel objected to resolution of the case via summary decision.⁴ Neither party submitted additional evidence, and the record closed on July 27, 2017.

Findings of Fact

Applicant was born in Lebanon. He attended American preparatory schools and university in Lebanon. He came to the United States in 1999 to attend a conference and met his now former wife. They married in 2000 and divorced in 2007. He applied for and was granted permanent U.S. residency status, and became a naturalized U.S. citizen in 2005. The following year, Applicant renounced his Lebanese citizenship. He only holds a U.S. passport. He has been employed by a large federal contractor since 2010, and has held positions with other federal contractors since 2002. He was granted a security clearance in approximately 2010.

In 2007, Applicant met his current spouse while they were attending the same U.S. graduate school. She was born in Israel. She came to the United States in 2002 on academic scholarship to attend an internationally well-respected U.S. college. She was 19 years old at the time and only her late father supported her decision to leave the family home, attend college, and pursue a professional career.

Applicant and his wife married in 2009. They had a small wedding, inviting only a few close friends. They did not invite their parents, siblings, or other relatives to the wedding. Applicant's wife became a naturalized U.S. citizen in 2014. That same year, Applicant submitted a security clearance application. He answered questions about his background, including reporting his foreign connections, relatives, and travel. He had reported this information on past security clearance applications.

² The AGA's decision statement, dated June 22, 2017, was marked Exhibit Q. It is unclear from the record whether this other favorable adjudication was based on a current investigation that meets or exceeds that necessary for the security clearance at issue. ISCR Case No. 12-04540 (App. Bd. Mar. 19, 2014); ISCR Case No. 03-04172 (App. Bd. Jun. 7, 2005). Arguably, Applicant waived (or, at a minimum, forfeited) the issue of reciprocity because he did not raise it before the record closed. See ISCR Case No. 16-00681 at 2 (A.J. Leonard Oct. 4, 2017) (concisely explaining waiver and forfeiture). However, in light of the resolution of this case and limited evidentiary record, I have not made a specific ruling on this issue.

³ Transcript (Tr.) at 111 (After noting that Applicant "seems to have integrated himself very fully in the American culture," Department Counsel stated that the Government left resolution of the case to my discretion).

⁴ Appellate Exhibit IV. No reason was provided for the Government's shift in position.

Applicant's parents are Lebanese citizens and reside in Lebanon. Applicant's father is a retired physician, who before retiring ran his own small private medical practice. His mother attended and graduated from an American university in Lebanon with financial assistance from a USG agency. However, she never worked outside the home. Applicant tries to speak with his parents at least every other month. He last traveled to Lebanon over seven years ago. His parents fully support his decision to live in the United States.

Applicant's older brother holds dual citizenship with Lebanon and the United Kingdom. He lives and works in Kuwait. He works in the financial services industry. Applicant speaks with his older brother on a somewhat infrequent basis.

Applicant's mother-in-law is a citizen and resident of Israel. His father-in-law passed away over a year ago. Applicant and his spouse are not particularly close to their parents, siblings, and other foreign relatives. Applicant has not met his mother-in-law in person. He met his father-in-law briefly via the internet before he proposed to his wife.

Applicant's wife is not close to her mother. They have not been on speaking terms for some time. They last spoke in March 2016, shortly after Applicant's father died. Applicant last traveled to Israel in 2014. She did not attend her father's funeral in 2016 because, in part, her family did not inform her of his passing for several days. She also did not attend her father's funeral because she did not want to see her siblings. She has four siblings, who are all quite older than her. She is unaware of their exact ages and has not been on speaking terms with most of them since deciding to leave Israel to pursue her educational and professional goals. Her decision to marry Applicant, a member of a minority group, was looked upon unfavorably by her mother and siblings.

None of Applicant's foreign relatives know about his work. They are not aware that Applicant and his wife are being sponsored for security clearances. None of Applicant's relatives work for or have any connection to, or association with, a foreign government or entity. Applicant and his wife do not currently have any foreign financial interests, property, or assets. All their tangible assets and property are in the United States. They do not provide financial support to any foreign persons, and are not financially indebted or beholden to any foreign government, person, entity, or group.⁵

Applicant has worked on open-source intelligence matters in support of contracts held by his employer with a U.S. Government (USG) agency. A colleague testified that Applicant "was bringing a lot of creative ideas that the client was loving and had a direct impact on the mission."⁶ He went on to state that Applicant's current work has been one of their employer's "most successful engagements," and some of Applicant's assessments have been reviewed at the highest levels of the USG.⁷

⁵ Tr. 26, 45-46, 51-80, 82-110; Exhibit 1; Exhibit A; Answer, Attachments 1 – 5. Applicant's wife received a 25% interest in the family home as an inheritance from her father's estate. She is only entitled to receive this inheritance upon her mother's death. She is in the process of disposing of the inheritance, because she does not want "anything to do with the family house" or her family in Israel. (Tr. 67.)

⁶ Tr. 23.

⁷ Tr. 24, 28; Exhibits N, P; Answer, Attachment 8.

Applicant is highly regarded by his peers, supervisors, and government clients for his work ethic, skills and abilities, high ethical standards, and loyalty to the United States.⁸ He has handled sensitive USG and company information for years without issue. Because of Applicant's stellar reputation for handling and safeguarding sensitive matters, he was recently selected by his employer to oversee a complex internal corporate matter.⁹

At the request of a USG agency client, Applicant submitted a security clearance application in approximately 2012 to upgrade his clearance. Before submitting the application, Applicant informed the client that he and his wife were foreign born and their families lived abroad. The client, however, insisted that Applicant proceed.

In November 2013, Applicant's request for access to classified information was denied by the USG agency. He immediately appealed the adverse decision. Nearly four years later, in June 2017, a senior adjudication official from the USG agency informed Applicant's counsel in a concise two paragraph, one-page letter that the agency was reversing its previous decision. The official went on to state that Applicant would not be required to list on future applications the denial, because it had been reversed.¹⁰ Applicant disclosed the adverse security clearance determination by the agency in response to relevant questions on his recent clearance application.¹¹

Applicant has continued to perform his job at an exceptionally high level. He is now responsible for managing and mentoring other employees, and has been placed in charge of handling multimillion-dollar contracts.¹² A recent performance review reflects that Applicant delivered "on time and under budget and greatly exceeded client expectations."¹³ He has earned numerous awards for his leadership, excellent work, and dedication.¹⁴ He has received high praise from his USG client. Recently, the USG client stated that Applicant "sets the standard for analytic expertise and dedication, and has been a go-to intelligence analyst for short-fuse, complicated projects."¹⁵

⁸ Tr. 27 (everyone who has ever worked with Applicant has "come out singing his praises"); Exhibit B; Exhibits D – P; Answer, Attachments 7 - 14.

⁹ Tr. 29-30.

¹⁰ Tr. 83; Exhibit Q.

¹¹ Exhibit 1.

¹² Exhibits A – B.

¹³ Exhibit B.

¹⁴ Exhibit C at 21; Answer, Attachments 13, 16.

¹⁵ Exhibit C at 21.

At hearing, Applicant credibly explained his motivation and dedication to his job as follows:

It's like this is what the U.S. is about; it's about the soft power we project towards the rest of the world, and the rest of the world could send us the best people back. They did it to my mom. I've been serving in national security and protecting my country here in the U.S. almost all my career, and this is the great part about being in this country and why day in and day out I'm the first person in the office and the last person to leave. I turn on the lights and off the lights, I work 14-hour days and people say, '[], you're killing yourself.' But this is a labor of love, this is why I'm here. There is no way I can thank this great nation for what they've done for me and my family than to be able to do this.¹⁶

One of Applicant's closest friends has worked for the USG in the national security field for several years and has had multiple deployments to Iraq. He was one of the few people invited to Applicant's wedding and testified as follows about Applicant and his wife:

First off, I would just like to point out that in my opinion and in my experience, these individuals [Applicant and his spouse] are as American as you and I, as anyone else in this room. They are loyal, dutiful, trustworthy, accountable . . . I think the best compliment that I could give them in evidence in the way I feel about them -- I explained to you that I spent quite a bit of time in Iraq -- I would trust them with my life there, without question.¹⁷

A retired U.S. military lieutenant general, who is a vice president for the company that employs Applicant, submitted a letter attesting to Applicant's reliability. general goes on to state that Applicant "handles sensitive matters very professionally, displaying a maturity that place him ahead of his peers. Often, he is personally selected to lead new efforts and tasks to ensure that they are done correctly and all appropriate policies and restrictions are followed."¹⁸

Administrative Notice – Lebanon and Israel.¹⁹

Lebanon is a parliamentary republic. Lebanon's history since 1943 has been marked by periods of political turmoil interspersed with prosperity. The United States seeks to maintain its traditionally close ties with Lebanon, and to help preserve its independence, sovereignty, national unity, and territorial integrity. The United States,

¹⁶ Tr. 99-100.

¹⁷ Tr. 47-48.

¹⁸ Exhibit K.

¹⁹ See *generally* Exhibits 2 and 3, as updated by current documents posted on U.S. State Department website (state.gov) and are appended to the record as Appellate Exhibit V. Although the SOR alleges that Applicant's brother's residence in Kuwait raised a foreign influence security concern, neither party presented evidence or matters for administrative notice regarding this country.

along with the international community, supports full implementation of several UN Security Council Resolutions, including the disarming of all militias in Lebanon.

The U.S. State Department's current human rights report on Lebanon reflects that civilian authorities generally maintained control over the armed forces and other security forces, although Palestinian security and militia forces, the designated terrorist group Hizballah, and other extremist elements operated outside the direction or control of government officials. It also reflects that the most significant human rights abuses during the year were torture and abuse committed by security forces. The report goes on to state that although the legal structure provides for prosecution and punishment, government officials enjoyed a measure of impunity for human rights abuses.

Furthermore, the State Department's human rights report notes that despite the presence of Lebanese and UN security forces, Hizballah retained significant influence over parts of the country, and the government made no tangible progress toward disbanding and disarming armed militia groups. Palestinian refugee camps continued to act as self-governed entities and maintained security and militia forces not under the direction of government officials.

The current State Department travel warning for Lebanon notes that violent extremist groups, including Hizballah, operate in Lebanon. The warning also notes that there is the potential for death or injury in Lebanon because of terrorist bombings and attacks. Furthermore, the Lebanese government cannot guarantee the protection of U.S. citizens against sudden outbreaks of violence, which can occur at any time in Lebanon. Additionally, the U.S. Embassy does not offer protection services to U.S. citizens who feel unsafe in Lebanon. Because of these dangerous conditions, the State Department warns U.S. citizens to avoid all travel to Lebanon.

Israel is a multiparty parliamentary democracy. Israel and the United States have historically strong bilateral relations, including cooperation on defense issues. However, there have been at least three cases in which U.S. government employees were convicted of disclosing classified information to Israel or of conspiring to act as an Israeli agent. The most prominent of these cases involved Jonathan Pollard, a former U.S. defense analyst, who was convicted of selling classified information to Israel in 1986. Following his conviction, the Israeli government granted Pollard citizenship and confirmed he was an Israeli agent. U.S. officials remain concerned about possible industrial espionage from Israel.

The current State Department travel warning for Israel states that the security situation remains complex in Israel and the West Bank and can change quickly. U.S. citizens are warned to remain vigilant throughout Israel, as the most significant human rights problem impacting the country were terrorist attacks targeting civilians. The travel warning states that U.S. citizens should avoid all travel to the Gaza Strip, which remains under control of Hamas, a designated foreign terrorist organization.

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 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 on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.²⁰

²⁰ However, a judge’s mere disbelief of an applicant’s testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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 . . . 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. (AG ¶ 6.)

A person is not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.²¹

In assessing the security concerns at issue, I considered all disqualifying and mitigating conditions listed under Guideline B, including the following:

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 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;

²¹ See *generally* AG ¶ 6. See *also* ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

AG ¶ 7(e): shared 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 ¶ 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;

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(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; and

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

An applicant with relatives in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required “to sever all ties with a foreign country before he or she can be granted access to classified information.”²² However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.²³ Moreover, when an applicant's foreign relatives reside in a country where elements hostile to the United States and its interests operate somewhat freely, such an applicant faces a very heavy burden in mitigating security concerns raised by their connections to and contacts with foreign relatives.²⁴

Here, the overwhelming weight of the record evidence favors granting Applicant's request for a security clearance. On the one hand, Applicant's ties to Lebanon and Israel through his and his wife's family members residing in these countries raise, on their face, a heightened security concern. On the other hand, though, Applicant and his wife's familial ties to these relatives is not as strong as the ties that each of them separately and collectively have formed to the United States.

²² ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

²³ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

²⁴ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

Of note, Applicant immigrated to the U.S. nearly 20 years ago. He has established a life in the United States. He earned advanced academic degrees in the U.S. and then started a professional career – choosing to work for the United States and its security. He married, divorced, and married again. His second marriage is to a person that his family, at first, disapproved of due to their prejudices. His wife’s relatives still do not fully accept their marriage. He has been employed as a federal contractor for over 15 years and has a favorable track record of handling and safeguarding sensitive information.

Applicant’s wife’s relationship to her family in Israel has been strained since she left Israel at age 19 to advance her education and pursue a professional career in the West. These weak familial ties diminished further after her father’s death in 2016. Her relationship to her relatives in Israel and, thus, by extension, Applicant’s connections to his in-laws, no longer pose a security concern.

In short, the evidence clearly reflects that Applicant and his wife’s professional, social, and economic ties and loyalty squarely lie with the United States. Accordingly, Applicant can reasonably be expected to resolve any potential conflict of interest raised by his and his wife’s foreign familial connections in favor of U.S. national security interests.

Security clearance assessments about a person require a judge to closely examine the individual’s conduct and circumstances, both past and present. In a Guideline B case this assessment necessarily requires a judge to consider the relevant country or countries at issue. Furthermore, a past favorable clearance adjudication does not bar security officials from reassessing an applicant’s eligibility, especially when new matters arise.

After considering and weighing the evidence, both favorable and unfavorable, I find that Applicant mitigated any security concerns raised by his foreign familial connections. All of the above listed mitigating conditions apply, in full or in part, and together with the favorable whole-person factors raised by the evidence,²⁵ mitigate the foreign influence security concerns. Overall, the record evidence leaves me with no questions or doubts about Applicant’s eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive, ¶ E3.1.25, are:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

²⁵ See AG ¶ 2 (whole-person concept). See *also* SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).

Conclusion

In light of the record evidence, it is clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge