



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08146
)	
Applicant for Security Clearance)	

Appearances

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

11/06/2017

Decision

MENDEZ, Francisco, Administrative Judge:

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

Statement of the Case

On May 24, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging that Applicant's connections to and contact with her relatives residing in Israel and her in-laws in Lebanon raised a security concern under the foreign influence guideline.¹ Applicant answered the SOR and requested a hearing.

By agreement of the parties, the hearing was held on May 23, 2017. Also, at Applicant's request, I convened a joint hearing for Applicant and her spouse, because their cases raised similar security concerns. Applicant, her spouse, and a number of colleagues and friends testified at the hearing. The exhibits offered by the parties were admitted into the administrative record without objection.²

¹ The SOR also alleged foreign preference security concerns, but the Government's motion to withdraw that allegation was granted and will not be further discussed.

² Government Exhibits 1 – 3; Applicant's Exhibits A – H. Correspondence, the notice of hearing, the case management order were marked Appellate Exhibits I – III.

On July 12, 2017, Applicant's counsel requested that the record be re-opened. Without objection, the record was re-opened and Applicant's counsel submitted the decision of another government agency (AGA) reversing its prior decision revoking Applicant's husband's eligibility for access to classified information. The AGA found that alleged foreign influence concerns raised by Applicant's husband's connections to and contact with his family in Lebanon and his wife's family in Israel were mitigated.³

On July 13, 2017, after considering the entire record, including the parties' respective positions,⁴ 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). Department Counsel objected to resolution of the case through summary decision.⁵ No additional evidence was submitted, and the record closed on July 27, 2017.

Findings of Fact⁶

Applicant was born in Israel. She was the youngest (by several years) of her parents' five children. She excelled academically in school and volunteered with organizations dedicated to advancing peace, advocating for human rights, and supporting efforts at cross-cultural and cross-religious dialogue. She applied to and was accepted at an internationally well-renowned U.S. college, receiving a full academic scholarship. Only her late father supported her decision to continue her education and pursue a profession.

At 19, Applicant left her village, traveled to the United States, and began college. She was the first woman from her village to attend college in the West. Since then, many young women from her village have followed in her footsteps. She earned a bachelor's degree and a master's degree from U.S. schools, and is currently pursuing another advanced degree.

While going to school, Applicant worked part-time to support herself. She primarily earned money tutoring others in one of the many languages that she fluently speaks and reads. After earning her college degree and before beginning her graduate studies, Applicant was selected and worked as a U.S. Congressional fellow. She has been working for a U.S. bank since 2013, earning a promotion each year and now is a manager.

³ Appellate Exhibit IV.

⁴ Transcript (Tr.) at 111 ("Generally there is a presumption that applicant has ties of affection or obligation to their immediate relatives; however, with respect to [Applicant], it does not appear as though she maintains a close relationship with her immediate relatives in Israel. . . . So in light of all of the evidence presented today about disqualifying and mitigating in nature, the government defers to ask judge as to whether or not it's clearly consistent with national interest to grant or continue clearances for applicants.").

⁵ Appellate Exhibit V. No reason was provided for the Government's shift in position.

⁶ Unless otherwise stated, the information herein is taken from: Tr. 12-20, 33-41, 51-80, 82-110; Exhibit 1; Exhibits A - H; Answer, Attachments 1 – 5.

In 2015, Applicant received a job offer from a large federal contractor, which has employed her husband for many years. She submitted a security clearance application in June 2015, in connection with this prospective job offer. The position is contingent on Applicant receiving a security clearance.

Applicant reported her foreign relatives on her security clearance application. She noted on the application that her father, a retired electrician, was seriously ill. He died nine months later. Applicant was not told by her family of her father's passing until a few days after he had died. She last spoke with her mother in March 2016, shortly after her father's death. She did not attend her father's funeral because, in part, she did not want to deal with her siblings.

Applicant last traveled to Israel in 2014. She is willing to renounce her Israeli citizenship, as she only kept it in case she needed to travel to Israel to care for her late father. Applicant states that she lost the right of residency in Israel some years ago. She only holds a U.S. passport, having destroyed her former Israeli passport after becoming a U.S. citizen in 2014.

Applicant's late father left her a 25% interest in the family home in Israel as an inheritance. She is entitled to receive this inheritance upon her mother's death. She is in the process of transferring her inheritance to her nephew, who is the son of the brother who primarily cared for her father in his final years. She has no interest in the inheritance or in mending ties with her family in Israel. In response to Department Counsel's question, Applicant summed her relationship with her family in Israel as follows:

I'll tell you this; I've always been, even in Israel, a kind of person who done her own thing and kind of lived in a household doing my own thing. They all were older than me and busy with their lives, so in a way kind of that paved a road for a relationship not to be the normal sibling relationship. They were already adults when I was a child, so I had to kind of find my own way being busy with my own books and education and extracurricular activities, so I kind of lived with my own world separate from theirs. That doesn't mean that if you ask me do I hate them, no I don't have hate for my family in my heart, but that doesn't mean that I bless them, I love them from a distance, but I understand it's not a relationship that worked out, not every family is the perfect family in this world.⁷

Applicant met her husband in 2007, when they were attending the same graduate school. He has worked in the defense industry as a contractor since approximately 2002 and was granted a security clearance in about 2010. They married in 2009. They had a small wedding and invited only their closest friends. Neither invited their relatives. Both families had initially voiced their displeasure about who they had chosen to marry. Applicant's mother and siblings objections to her husband are based on their strongly held prejudices. Before deciding to marry, Applicant introduced her future husband to the American couple that she affectionately refers to as her adopted parents and the professor who helped her apply and get a scholarship to attend college in the United

⁷ Tr. 78.

States. At the time, she confided in these close friends that she hoped her family's attitudes towards her husband would change after they married.

Applicant's husband was born in Lebanon. Applicant's father and mother-in-law are Lebanese citizens, who reside in Lebanon. Her father-in-law is a retired physician. Before retiring, he ran his own small private medical practice in Lebanon. Her mother-in-law attended and graduated from an American university in Lebanon. She received financial assistance from the U.S. Government to attend college. Her mother-in-law never worked outside the home. Applicant's husband tries to speak with his parents at least every other month. He last traveled to Lebanon over seven years ago. Applicant speaks with her in-laws infrequently, maybe once or twice a year on special occasions. She notes that, even if she wanted to visit her in-laws, she would be denied entry into Lebanon because her U.S. passport reflects she was born in Israel.

None of Applicant's relatives work for or have any connection to, or association with, a foreign government, entity, or group. Applicant and her husband do not currently have any foreign financial interests, property, or assets. All of their tangible assets and property are in the United States, including their home, bank accounts, and retirement savings. 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.

In addition to working a full-time job and taking courses in pursuit of another graduate degree, Applicant is active in her community. Her closest friends are current or former cleared federal employees. Persons who have known Applicant since she started college, including a former U.S. Ambassador, submitted strong letters of support. The collective opinion of these individuals is that Applicant is an honest, reliable, highly principled and ethical person who is strongly patriotic and loyal to the United States.

One of Applicant and her husband's closest friends has worked for the U.S. Government in the national security field for several years and has deployed to Iraq on multiple occasions. He was one of the few close friends invited to their wedding. He provided the following unchallenged opinion about Applicant and her husband:

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.⁸

⁸ Tr. 47-48.

Administrative Notice – Israel and Lebanon.⁹

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.

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, 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

⁹ 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 VI.

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.

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, ¶ E3.1.32.1.¹⁰

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.¹¹

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

¹⁰ 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).

¹¹ 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).

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;

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; and

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.

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.”¹² However, what factor or combination of factors may mitigate security concerns raised by an applicant with foreign relatives is not easily identifiable or quantifiable.¹³ Moreover, when an applicant’s foreign relatives reside in a country facing a significant terrorist threat or a country where hostile elements operate somewhat freely and significant human rights issues have been reported by the U.S. State Department, such an applicant faces a heavy burden in mitigating security concerns raised by their connections to and contacts with foreign relatives.¹⁴

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

¹³ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

¹⁴ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

Here, the overwhelming weight of the record evidence favors granting Applicant's request for a security clearance. On the surface, Applicant's familial ties to Israel and Lebanon would seem to raise a security concern. But, in scratching right below the surface, the evidence clearly reveals that Applicant's relationship with her foreign relatives is minimal and inconsequential from a security clearance standpoint.¹⁵

Of note, Applicant's only true strong familial bonds to Israel were through her father. He was the only member of the family who supported Applicant's decision to move to the United States to pursue her educational and professional dreams. When he died over a year ago, Applicant's already strained relationship with her mother and siblings completely fell apart. She has not spoken to her mother since her father died. Her relationship with her in-laws appears to be respectful, but distant. Thus, I agree with Department Counsel that Applicant rebutted the legal presumption that she has close ties of affection and obligation to her foreign relatives.¹⁶

Furthermore, although Applicant has not yet had the opportunity to put her immeasurable talents and skills to work on behalf of the U.S. Government, the obvious strength of character, tenacity, and discipline she has shown to get to this point in her young life raise favorable inferences about her ability to properly handle and safeguard sensitive U.S. information. Her and her husband's professional, social, and economic ties and loyalty squarely lie with the United States. AG ¶¶ 8(a) through 8(c) apply.

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. After considering and weighing the evidence, both favorable and unfavorable, I find that Applicant met her burden of proof and persuasion in mitigating security concerns raised by her foreign familial connections.¹⁷ Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

¹⁵ The Appeal Board has held that "it is the nature of the foreign ties themselves that give rise to a security concern." ISCR Case No. 14-03112 at 4 (App. Bd. Nov. 3, 2015). Thus, when the nature of an applicant's relationship to his or her foreign relatives is not close, such distant familial ties do not raise a security concern. Otherwise, the mere possession of foreign relatives would stand as a bar to holding a security clearance – a position that is not supported by the Directive and Executive Orders.

¹⁶ See e.g. ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (applicant's lack of a meaningful relationship with and limited contact with foreign relatives supported judge's favorable Guideline B decision).

¹⁷ In reaching this conclusion, I also considered the candor Applicant exhibited throughout the security clearance process and the evidence provided by her longtime references. 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).

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
Paragraph 2, Guideline C (Foreign Preference):	WITHDRAWN
Subparagraph 2.a:	Withdrawn

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