



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 16-04116

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

06/07/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant mitigated trustworthiness concerns raised under Guidelines B (foreign influence) and C (foreign preference). Guideline E (personal conduct) trustworthiness concerns were refuted. Applicant's eligibility to occupy a public trust position is granted.

**Statement of the Case**

On January 15, 2016, Applicant completed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On May 3, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her (Hearing Exhibit (HE) 3), pursuant to Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, Jan. 1987, as amended (Regulation); and the adjudicative guidelines (Sept. 1, 2006 AGs).

The SOR alleges trustworthiness concerns under Guidelines B, C, and E. (HE 3) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Regulation that it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (HE 3) DOHA recommended referral to an administrative judge

to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

On June 3, 2017, Applicant responded to the SOR allegations, and she requested a hearing. (HE 4) On July 3, 2017, Department Counsel indicated she was ready to proceed. On December 5, 2017, the case was assigned to me. On January 23, 2018, DOHA issued a hearing notice setting the hearing for January 29, 2018. (HE 1) Applicant's hearing was held as scheduled. Applicant waived her right to 15 days of notice of the date, time, and location of the hearing. (Tr. 13-14) At the hearing, Department Counsel offered two exhibits, and Applicant offered one exhibit (Tr. 17-19; GE 1-2; Applicant Exhibit (AE) A). There were no objections, and all exhibits were admitted into evidence. (Tr. 17-21). Additionally, I admitted the SOR, response to the SOR, and hearing notice (HE 1-3). On February 7, 2018, I received the transcript. On March 23, 2018, Department Counsel forwarded AE B to me, and I admitted AE B without objection. The record closed on March 29, 2018. (Tr. 41)

The SOR in this case was issued under DOD 5200.2-R and the September 1, 2006 AGs. The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A new adjudicative guidelines (AG), which are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's eligibility for a public trust position under the new AGs.<sup>1</sup>

### **Procedural Ruling**

Department Counsel offered information for administrative notice discussing foreign influence trustworthiness concerns raised by Applicant's connections to Lebanon. (Tr. 18-19; HE 4) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

There were no objections to me taking administrative notice of the documents Department Counsel proffered. (Tr. 19; HE 4) The requests for administrative notice are granted. The "Lebanon" section of this decision is derived from Department Counsel's administrative notice request.

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<sup>1</sup> Application of DOD 5200.2-R and the September 1, 2006 AGs, which were in effect when the SOR was issued, would not change my decision in this case.

## Findings of Fact<sup>2</sup>

Applicant admitted all of the allegations in SOR ¶¶ 1.a through 1.f, and 2.a. She denied the remaining SOR allegations and provided explanations. (HE 3) Applicant's admissions are accepted as findings of fact.

Applicant is a 35-year-old management analyst employed by a defense contractor. (Tr. 6-7) She has worked for the same employer for two years. (Tr. 7) In 2001, she graduated from high school. (Tr. 6) In 2008, she received a bachelor's degree in marketing from a U.S. university. (Tr. 6-7)

### Foreign Influence

Applicant was born in the United States. (Tr. 21) Because her father is a dual citizen of Lebanon, she is a dual citizen of Lebanon and the United States. (Tr. 21) She lived in Lebanon for several years as a child and from 1995 to 1997. (Tr. 22)

In 2005, Applicant met her husband in Lebanon. (Tr. 24) In 2010, they married, and in 2016, he became a U.S. citizen. (Tr. 24, 38) In 2009, Applicant and her husband moved to the United Arab Emirates (UAE) for employment. (Tr. 24-25) They lived in UAE until 2013. (Tr. 25) They traveled to Lebanon several times from 2009 to 2013. (Tr. 25) Her husband is a finance manager. (Tr. 28) In 2013, they returned to the United States, and in 2016, they purchased a home in the United States. (Tr. 28-29) She has never owned any property in Lebanon. (Tr. 29) She and her husband have not visited Lebanon since 2013. (Tr. 30, 40) She has no future plans to travel to Lebanon. (Tr. 30) She has a four-year-old child who was born in the United States, and her child lives with Applicant in the United States. (Tr. 38; GE 1) She has aunts, uncles, and cousins on her mother's side of the family who live in the United States. (Tr. 39)

Applicant's father, sister, stepmother, and aunt are dual citizens of Lebanon and the United States, and they all live in the United States. (Tr. 31-32; SOR ¶¶ 1.a-1.d) Her mother was born in the United States, and she has passed away. (Tr. 30; AE B) Her father and uncles have property in Lebanon. (Tr. 30) Her father is retired. (Tr. 31)

Applicant's mother-in-law and father-in-law are citizens and residents of Lebanon. (Tr. 32; SOR ¶¶ 1.e and 1.f) She does not communicate with her in-laws. (Tr. 33)

The SOR alleges that Applicant maintains close and continuing contact with F and Z, and they are citizens of Lebanon and residents of UAE. (SOR ¶¶ 1.g and 1.i) The SOR also alleges she maintains close and continuing contacts with B, a citizen and resident of Lebanon. (SOR ¶ 1.h) She has not communicated with F, Z, or B since 2016. (Tr. 33) As time passed, she lost touch with them. (Tr. 33)

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<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## **Foreign Preference**

Applicant has never held a Lebanese passport. (Tr. 22) On January 24, 2018, she gave her Lebanese Identification Card, which was issued to her in October 2009, to her security manager. (Tr. 23; SOR ¶ 2.a; AE A) She renounced her Lebanese citizenship. (Tr. 22, 35-36; AE B)

## **Personal Conduct**

The SOR alleges that Applicant failed to disclose on her January 15, 2016 SCA that she and/or her spouse had bank accounts in Lebanon and the UAE. (SOR ¶ 3.a) She also failed to disclose that she traveled to Lebanon in 2012. (SOR ¶ 3.b) She disclosed her visits to Lebanon in 2005, 2008, 2010, and 2013 on her SCA, but not her visit to Lebanon in 2012. (Tr. 34; GE 1)

When Applicant lived in UAE, she had a bank account in UAE. (Tr. 25) When she left UAE in 2013, she closed her UAE bank account. (Tr. 25, 27-28) Applicant never had a bank account in Lebanon. (Tr. 25)

At the time she completed her SCA, Applicant did not think about the bank account that she had in the UAE when she lived there, and she forgot to mention that she visited Lebanon in 2012, to close her aunt's bank account. (Tr. 15-16; SOR response) They were complete oversights. (Tr. 16) She disclosed information about overseas banking transactions and the visits to Lebanon during her follow-up July 8, 2016 Office of Personnel Management (OPM) personal subject interview. (GE 2)

## **Lebanon**

Lebanon is a parliamentary democracy. Syria borders on Lebanon and influences Lebanon's foreign and internal domestic policies. Syria has been engaged in an internal conflict for many years and millions of refugees have left Syria and settled in camps in neighboring countries. The U.S. State Department has declared the Syrian Government to be a supporter of terrorism. The United States seeks to maintain its traditionally close ties with Lebanon. Lebanon has some serious human rights problems.

Hezbollah is a radical Shia group, which operates in Lebanon and Palestine and receives support from Iran. It is a U.S.-designated foreign terrorist organization. The Lebanese Government recognizes Hezbollah as a legitimate group. The Islamic State of Iraq and the Levant (ISIL), Al-Nusra Front (ANF), Hamas, and the Abdullah Azzam Brigades (AAB) operate in Lebanon, and ISIL and ANF have claimed responsibility for suicide bombings in Lebanon.

Human rights abuses are widespread in Lebanon. They range from torture by security forces to discrimination against women and minorities.

Americans have been the targets of terrorist attacks in Lebanon, and the perpetrators of some of those attacks are still present in Lebanon and retain the ability to commit further acts of terrorism. U.S. government employees in Beirut are required to live under strict security because of the dangers of terrorism. Groups hostile to the Lebanese Government and the United States operate largely autonomously inside refugee camps in different areas of Lebanon. The U.S. State Department continues to urge Americans to avoid travel to Lebanon.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance [or a public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant

from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security and trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance [or access to sensitive information].” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the trustworthiness concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 has two conditions that could raise a trustworthiness concern and may be disqualifying in this case:

- (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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect 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.

Applicant does not have frequent communications<sup>3</sup> with any citizens or residents of Lebanon. Applicant and her husband have not been to Lebanon since 2013. Her father, sister, stepmother, and aunt are dual citizens of Lebanon and the United States, and they all live in the United States. Her father and uncles have property in Lebanon. Her father is retired. Her mother-in-law and father-in-law are citizens and residents of Lebanon. She does not communicate with her in-laws.

Until 2016, Applicant had close and continuing contact with F and Z, and they are citizens of Lebanon and residents of UAE. Until 2016, she maintained close and continuing contacts with B, a citizen and resident of Lebanon. Applicant's contacts with F, Z, and B have ended. They are no longer a trustworthiness concern. There is no trustworthiness concern about anyone she knows who is living in UAE.

There are widely documented safety issues for residents of Lebanon because of terrorists and insurgents. The mere possession of close family ties with one or more family members living in Lebanon is not, as a matter of law, disqualifying under Guideline B; however, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified or sensitive information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the

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<sup>3</sup> The Appeal Board has concluded that contact every two months or more often constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Lebanon with the United States, and the situation in Lebanon places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her relationships with family living in Lebanon do not pose a security risk. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist a relative living in Lebanon.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified and sensitive information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Lebanon seek or have sought classified or sensitive information from or through Applicant or her family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Lebanon has a significant problem with terrorism. Applicant's relationships with family living in Lebanon create a potential conflict of interest because terrorists could place pressure on her family living in Lebanon in an effort to cause Applicant to compromise classified or sensitive information. This relationship creates "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's contacts with family living in Lebanon or connected to Lebanon and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established. Further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence trustworthiness concerns including:

(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;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(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; and

(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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility [or eligibility for a public trust position], there is a strong presumption against the grant or maintenance of a security clearance [or access to sensitive information]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security [or trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [such] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a), 8(b), and 8(c) apply. Applicant does not have frequent communications or contacts with anyone living in Lebanon. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S."

Applicant was born in the United States. (Tr. 21) Because her father is a dual citizen of Lebanon, she is a dual citizen of Lebanon and the United States. She lived in Lebanon for several years as a child, and from 1995 to 1997.

In 2016, Applicant's husband became a U.S. citizen. In 2013, they returned to the United States, and in 2016, they purchased a home in the United States. Applicant has never owned any property in Lebanon. Applicant and her husband have not visited Lebanon since 2013. She has no future plans to travel to Lebanon. She has a four-year-old child who was born in the United States, and her child lives with Applicant in the United States. She has aunts and uncles and cousins on her mother's side of the family who live in the United States. She has no contacts with anyone living in Lebanon.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationship with her in-laws who are citizens and residents of Lebanon, and with some of her family living in the United States with continuing connections to Lebanon.

In sum, Applicant's connections to Lebanon are less significant than her connections to the United States. Her employment in support of the U.S. Government, family living in the United States, and U.S. citizenship are important factors weighing towards mitigation of trustworthiness concerns. Her connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence trustworthiness concerns under Guideline B.

## **Foreign Preference**

AG ¶ 9 describes the foreign preference trustworthiness concern 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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 describes conditions that could raise a trustworthiness concern and may be disqualifying:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;

(d) participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and

(f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

Applicant has never held a Lebanese passport; however, Applicant possessed a Lebanese Identification Card, which was issued to her in October 2009. The Lebanese Identification Card could be used to qualify for benefits in Lebanon. While none of the listed disqualifying conditions apply, the list under AG ¶ 10 is not exclusive. Consideration of mitigating conditions is required.

AG ¶ 11 lists conditions that could mitigate trustworthiness concerns:

(a) the foreign citizenship is not in conflict with U.S. national security interests;

(b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

(d) the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen;

(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern;

(f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk;

(g) civil employment or military service was authorized under U.S. law, or the employment or service was otherwise consented to as required by U.S. law; and

(h) any potentially disqualifying activity took place after receiving the approval by the agency head or designee.

AG ¶ 11(c) applies. On January 24, 2018, Applicant gave her Lebanese Identification Card to her security manager. She renounced her Lebanese citizenship. Foreign preference trustworthiness concerns are mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a trustworthiness concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a trustworthiness concern and may be disqualifying in this case, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, . . . used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness[.]"<sup>4</sup>

Applicant failed to disclose on her January 15, 2016 SCA that she and/or her spouse had a bank account in the UAE. She also failed to disclose that she traveled to Lebanon in 2012. She disclosed her visits to Lebanon in 2005, 2008, 2010, and 2013 on her SCA, but failed to include her visit to Lebanon in 2012. When Applicant lived in UAE, she had a bank account in UAE. When she left UAE in 2013, she closed her UAE bank account.

At the time she completed her SCA, Applicant did not think about the bank account that she had in the UAE when she lived there, and she forgot to mention that she visited Lebanon in 2012 to close her aunt's bank account. She credibly explained that these omissions were oversights. She did not omit information with intent to

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<sup>4</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

deceive. She gave detailed information in her follow-up OPM PSI about her travel and foreign financial transactions. She has refuted the allegation that she intentionally falsified her January 15, 2016 SCA. Personal conduct trustworthiness concerns are decided for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance or access to sensitive information by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance or access to sensitive information "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines B, C, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 35-year-old management analyst employed by a defense contractor. She has worked for the same employer for two years. In 2008, she received a bachelor's degree in marketing from a U.S. university.

A Guideline B decision concerning Lebanon must take into consideration the geopolitical situation in Lebanon, as well as the dangers existing in Lebanon.<sup>5</sup> The danger of violence or coercion from terrorists in Lebanon and the threat of coercion from the Lebanese government are manifestly clear.

Applicant has much closer connections to the United States than to Lebanon. Applicant, her husband, child, and other relatives live in the United States and are U.S. citizens. She has renounced her Lebanese citizenship. Her only family in Lebanon are her in-laws, and she does not communicate with them. She and her husband have not visited Lebanon since 2013.

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<sup>5</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Applicant mitigated the trustworthiness concerns under Guidelines B (foreign influence) and C (foreign preference). She refuted security concerns under Guideline E (personal conduct).

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a and 3.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant or continue Applicant's eligibility for a public trust position. Eligibility for a public trust position is granted.

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Mark Harvey  
Administrative Judge