



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



In the matter of:)
)
) ISCR Case No. 17-00630
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant has mitigated foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 30, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken 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 the DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive (SEAD) 4, revising the 2006 AGs. The revised AG apply to all adjudicative decisions issued on or after June 8, 2017. I have based my decision on the newly effective AG.

Applicant answered the SOR on April 10, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on August 25, 2017. Applicant received the FORM on September 6, 2017, and had 30 days to submit material in refutation, extenuation, or mitigation. Applicant responded on September 29, 2017, by providing a 15-page-typed statement plus attachments including copies of his two certificates of appreciation and three character reference letters including one from the Director of Security at his employer. His response was marked as Applicant's Exhibit (AE) A and it was admitted into evidence without objection. The Government's documents, identified as Items 1 through 8, were also admitted into evidence without objection. The case was assigned to me on January 17, 2018.

Request for Administrative Notice

Department Counsel submitted a written request to take administrative notice of certain facts about Lebanon. Item 8. The request and attached source documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I.

The request listed supporting documents to show detail and context for those facts. AG ¶ 6, Foreign Influence, provides, "Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism." A risk assessment in this case necessitates administrative notice of facts concerning Lebanon.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See 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).

Applicant did not object, and I have taken administrative notice of the facts contained in the HE I source documents, and incorporated them by reference. The facts are summarized in the written request and will not be repeated in this decision. However, of particular note, are the following salient facts gleaned from HE 1.

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.

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.

Findings of Fact¹

Applicant is 49 years old. He was born in Lebanon and moved to the United States (U.S.) in 1982. He attended high school from 1984 to 1987, but did not get a diploma. He was naturalized as a U.S. citizen in 1991 at Los Angeles, CA. He lost his Lebanese passport a long time ago and he has been self-employed as the owner of a security company since May 2012. Applicant is also pending employment as a linguist and cultural advisor since October 2015, depending on obtaining his security clearance. He reports a previous security clearance from 2000, with no issues. Applicant served on active duty in the U.S. Army from 2000 to 2003 and received an honorable discharge. Then, he supported U.S. forces in Iraq as a linguist from 2003 to 2005 and 2007 to 2011. He was unemployed from April 2011 to May 2012. Applicant was married in 2000 and divorced in 2003. He remarried in October 2005 in Lebanon and reports two children, ages three and eleven.

Applicant submitted a Questionnaire for National Security Positions (SCA) on October 21, 2015.² In section 18 of his SCA, he disclosed his spouse, his brother, and his in-laws, who are citizens and residents of the Lebanon. His spouse is a dual citizen of the U.S. and Lebanon. His in-laws are elderly and have never had any affiliation with the Lebanese government. They have never asked Applicant what he does for work and Applicant has very little contact with them. He last saw his brother at his father's funeral in Lebanon in September 2012. He has infrequent telephonic contact only annually with his brother. They last spoke by phone in September 2011. His brother has no affiliation with the Lebanese government. Applicant has been married over 13 years, and his wife

¹ Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions (SCA) dated October 21, 2015 (Item 4) and the summary of his clearance interview by a clearance investigator on August 15, 2016, and December 23, 2016 follow-up interview. (Item 7)

² Item 4.

supported him through several deployments to work as a linguist in combat zones. She is a homemaker and resides with Applicant. She has no affiliation with the Lebanese government or security. He also disclosed his foreign travel in his SCA including multiple trips to Qatar and Lebanon.

Applicant responded to the FORM on September 29, 2017, by providing a 15-page-typed statement plus attachments including copies of his two certificates of appreciation and three character reference letters including one from the Director of Security at his employer, and another from a senior U.S. Army Officer. All attest to his work ethic, loyalty to the U.S. and trustworthiness. His director of security references Applicant's numerous awards and decorations from his active duty in the U.S. Army, and as a linguist.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 and endures throughout off-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 the 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.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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 that is 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, such considerations as whether the foreign country is known to target United States citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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;
- (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;
- (c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign-owned or foreign-operated business that could subject

the individual to heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's brother and in-laws are citizens and residents of the Lebanon. Extremist groups and terrorism plague Lebanon. It is contiguous to Syria and accepts scores of refugees from that war-torn neighbor. Lebanon is unstable and rife with human rights abuses. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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 U.S., 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.

I considered the totality of Applicant's foreign contacts and interests. Guideline B is not limited to countries hostile to the United States:

The United States has a compelling interest in protecting and safeguarding classified 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.³

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the U.S. 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. The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing whether an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the U.S., or the foreign country is associated with a risk of terrorism.

Applicant came to the United States in 1982. He became a U.S. citizen in 1991. He is married and has been employed supporting U.S. forces in war zones for over 15 years. He served in the U.S. Army and he appears to be a solid citizen. He has longstanding relationships and loyalties here as evidenced by his character reference letters. Although he has relatives in Lebanon, which is an unstable environment, his contact with them is *de minimis*. He continues to have only fleeting, occasional contact with his family members in Lebanon. There is no indication that they are affiliated with the Lebanese government or intelligence services. Applicant is committed to his new life here. AG ¶¶ 8(a), (b), and (c) are applicable to Lebanese family members contacts, which are alleged in SOR ¶¶ 1.a – 1.c. Because Applicant's ties to Lebanon are minimal and inconsequential, I find that all foreign influence concerns have been mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. 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.

³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline.

Applicant served as a U.S. linguist, translator, or cultural advisor for over five years in Iraq. Applicant provided character references and certificates for his service in a designated combat zone. He made contributions to the U.S. military at personal risk. He is willing to continue to serve in Southwest Asia as a linguist. All of these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). His past honorable service as a linguist weighs heavily towards approval of his security clearance. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb 5, 2008).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence security concerns.

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 – 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge