



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-01482
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: Eric A. Eisen, Esq.

07/20/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his parent's residence and work in Lebanon supporting a non-governmental, human rights organization. Clearance is granted.

Statement of the Case

On May 30, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the foreign influence guideline. Applicant answered the SOR and requested a hearing. The hearing was originally scheduled for February 22, 2018, but, at Applicant's request, was rescheduled for March 8, 2018. The hearing was convened on the re-scheduled date. Applicant and his father testified. The exhibits offered by the parties were admitted into the record without objection.¹ The transcript of the hearing was received on March 5, 2018, and the record closed on April 6, 2018.²

¹ Government Exhibits 1 – 3; Applicant's Exhibits A – D.

² Department Counsel's discovery letter, prehearing correspondence, and post-hearing matters are attached to the record as Appellate Exhibits I – III, respectively.

Findings of Fact

Applicant, 22, was born in the United States. His father is a U.S.-born citizen. His mother is a dual citizen of Lebanon and the United States, who was born in Lebanon. Applicant is their only child. Applicant's parents work for a Christian-based human rights organization (HRO) and are currently assigned to Lebanon.³

Applicant and his parents lived in the United States until about 2004, when his parents decided to join the HRO. The family then moved overseas, living primarily in the Middle East. Before moving, Applicant's parents went through the HRO's internal security briefings and training. They also agreed to a detailed, written emergency action plan. The plan covers a number of exigencies, including kidnapping. The plan calls for appropriate notifications and several HRO officials, both inside and outside the foreign country where Applicant's parents are assigned, are responsible for providing assistance and making the necessary notifications. Applicant's parents receive refresher security briefing and training through the HRO each year, and the emergency action plan is also reviewed and, if necessary, revised on an annual basis.⁴

Applicant's uncle, who served for several years as a local public official for a large U.S. county, notes that the emergency action plan was put into effect during one particular period of instability and unrest in the Middle East. He recalls that, although Applicant and his family were not in any immediate danger, as a precautionary measure, the HRO withdrew Applicant and his family from the foreign country. They were able to return to the United States without issue, and only returned to the foreign country after the matters that raised a concern had passed.⁵

Applicant testified that he and his parents have discussed the potential risks associated with their current situation. If someone would attempt to influence him through his parents, Applicant would immediately report any such attempts to his employer's security office and the appropriate U.S. Government authorities.⁶ He went on to explain that his parents taught him to "do my duty to my country, and [in such a situation] . . . not only would they want me to, but if they could they would instruct me to contact my facility security officer and the authorities."⁷

From 2005 to 2014, Applicant attended schools overseas with other children originally from the United States, the United Kingdom, and other Western countries. After graduating from high school, Applicant decided he wanted to return home to study and

³ Tr. 44-46; Answer; Exhibits 1 – 2; Exhibit A at 1-2.

⁴ Tr. 44-48; Exhibit D.

⁵ Exhibit A at 11.

⁶ Tr. 51-53.

⁷ Tr. 56-57.

live in the United States. He applied to and was accepted by a college in the United States.⁸

Applicant has excelled in college, academically and otherwise. He accepted an offer from a large defense contractor to work for the company during his summer breaks. The company has offered him a full-time position and placed him in its leadership training program.⁹

In 2015, Applicant submitted a security clearance application (SCA) in connection with his employment by the defense contractor. Applicant fully reported his foreign connections and contacts on the SCA. He then discussed them, as well as other aspects of his background, during his security clearance background investigation.¹⁰ He was subsequently granted an interim security clearance to work as a college intern for the defense contractor. While so employed, Applicant dutifully reported to the defense contractor's security office a chance encounter he had with someone who he later learned was a foreign government official.¹¹ The Director of Security Services for the large defense contractor noted that Applicant's report of the encounter was "appropriate and diligent."¹²

Numerous individuals associated with the HRO or the church that Applicant and his family attended in the United States, and who have remained close to the family, provided letters in support. These letters note Applicant's maturity, immense work ethic; high moral standards, charitable work from an early age, and conscientiousness about protecting the identity of others in sensitive situations. The captain of Applicant's college-sponsored engineering team states that Applicant is a natural leader, a good teammate, and a mentor to younger teammates. Applicant is actively involved with the team and other volunteer activities in his community. He has several close family members that live within close proximity to where he resides in the United States.¹³

Administrative Notice – Lebanon¹⁴

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. In a recent country

⁸ Tr. 44-48.

⁹ Tr. 48-50.

¹⁰ Exhibits 1 – 2.

¹¹ Tr. 50-51.

¹² Exhibit B.

¹³ Exhibit A.

¹⁴ See *generally* Exhibit 3, as updated by current documents posted on the U.S. State Department website (state.gov) and are appended to the record as Appellate Exhibit IV.

report on terrorism, the U.S. State Department noted that Lebanon was a committed partner in the counter-ISIS fight, and its ground forces represented one of the most effective counterterrorism forces in the region. U.S. forces partnered closely with Lebanon's defense and law enforcement security apparatus as Lebanon continued to face significant internal and external terrorist threats.

The following additional relevant facts, which are taken from official, publically-available U.S. Government reports, are hereby accepted for administrative notice:

1. Lebanon's civil authorities maintained control over the armed forces and other security forces. However, Palestinian security and militia forces, the designated foreign terrorist organization Hizballah, and other extremist elements operated outside the direction or control of government officials. Hizballah, with considerable support from Iran, retained significant influence over parts of the country and remained the most capable terrorist group in Lebanon.
2. The U.S. State Department's current travel warning for Lebanon states that U.S. citizens should reconsider or avoid travel to particular areas in Lebanon because of the threats of terrorism, armed clashes, kidnapping, and outbreaks of violence, especially near Lebanon's borders with Syria and Israel. Violent extremist groups operate in Lebanon, including U.S. government-designated terrorist organizations. U.S. citizens have been the targets of terrorist attacks in Lebanon in the past, and terrorist groups continue plotting possible attacks in Lebanon.
3. The travel warning goes on to state that the Lebanese government cannot guarantee the protection of U.S. citizens against sudden outbreaks of violence. Kidnapping, whether for ransom, political motives, or family disputes, has occurred in Lebanon. Suspects in kidnappings may have ties to terrorist or criminal organizations.
4. The U.S. State Department's current human rights report reflects credible reports detailing the commission of serious human rights abuses in Lebanon, including arbitrary and unlawful killings by government forces and non-state actors. Although Lebanon's legal structure provides for prosecution and punishment, enforcement remained a problem, and government officials enjoyed a measure of impunity for human rights abuses.

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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

“[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.

DOHA administrative judges “are creatures of the Directive,”¹⁵ who derive their authority from the Directive. The Directive also sets forth an administrative judge’s responsibilities and obligations, including the requirement that a judge remain fair and impartial, and 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. See *also* ISCR Case No. 16-03712 at 3 (App. Bd. May 17, 2018).¹⁶

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* Security Executive Agent Directive 4 (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.

¹⁵ ISCR Case No. 17-01213, n. 2 (App. Bd. June 29, 2018).

¹⁶ However, a judge’s mere disbelief of an applicant’s testimony or statements, 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 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).

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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is explained at AG ¶ 6:

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.

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.¹⁷

In assessing the foreign influence security concern, I considered all disqualifying and mitigating conditions listed under Guideline B, including:

AG ¶ 7(a): contact, regardless of method, with a foreign family member . . . 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;

¹⁷ 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 ¶ 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 . . . 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 foreign relatives 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.”¹⁸ However, what factor or combination of factors will mitigate security concerns raised by an applicant with relatives in a foreign country is not easily identifiable or quantifiable.¹⁹ Furthermore, a heightened level of scrutiny is warranted when an applicant’s relatives with whom they have a close relationship reside in a hostile foreign country or a country where elements hostile to the United States and its interests operate somewhat freely.²⁰

Here, Applicant has a close relationship to his parents. It is not a mere hypothetical concern that if hostile elements within Lebanon became aware of Applicant’s position as a cleared U.S. Government contractor that they would attempt to leverage his close relationship with his parents for their own advantage and purposes. This situation clearly raises a heightened security concern. Nonetheless, after considering and weighing the evidence, I find that Applicant provided sufficient evidence to mitigate the foreign influence concern. Specifically, I find that Applicant established the above-listed mitigating conditions, in whole or in part. Of note:

1. Applicant has already exhibited the security conscientiousness required of all clearance holders. He dutifully reported to his employer’s security office a chance

¹⁸ ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

¹⁹ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

²⁰ See *generally* ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

encounter with a foreign government official. He fully documented his foreign connections and contacts on his SCA, and he was upfront and candid throughout the security clearance process. This evidence leads me to conclude that Applicant can be trusted to report any attempts to influence him through his parents.

2. His parents' work and residence in Lebanon is a temporary situation and, more importantly, they and their employer have put in place appropriate safeguards and plans of action in case a serious issue were to arise.
3. Applicant's strong connections and ties to the United States, which continue to grow and deepen with each passing day.

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 his burden of proof and persuasion. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
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Subparagraphs 1.a and 1.b:	For Applicant
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Conclusion

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

Francisco Mendez
Administrative Judge