



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01962

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

07/03/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On June 26, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 5, 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), and it was received by Applicant on October 3, 2017. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4. Applicant provided a response to the FORM with additional documents that are marked as Applicant Exhibits (AE) A through J. There was no objection to any of the evidence and Items 1 through 4 and AE A through G are admitted. The case was assigned to me on March 2, 2018.

Request for Administrative Notice

In the FORM, Department Counsel requested that I take administrative notice of certain facts about the Lebanon. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications and those that were provided with the FORM. The facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He was born in Lebanon. He received a bachelor's degree in Lebanon and a master's degree in the United States. He has worked for his present employer since 2005. He came to the United States in 2007 and was sponsored by his employer, an American company that operates internationally. He was later sponsored for permanent residency in the U.S. by his employer. As part of his employment, Applicant lived in foreign countries for extended periods while working. He became a naturalized citizen in April 2016. He married an American citizen in 2013 and has a three-year-old child and an infant child both born in the U.S. He stated that his children are not dual citizens of Lebanon.¹

Applicant's mother, father, brother, and sister are citizens and residents of Lebanon. His mother was born in Ghana. Applicant disclosed in his 2016 security clearance application (SCA) that she is unemployed. His father was born in Lebanon. He reports his father's occupation as self-employed at a body shop. His brother is 30 years old and his sister is 34 years old. He listed his brother's employer, but not his brother's occupation. It is unknown if he is married or has children. Applicant's sister is married and he lists her employer as a school. It is unknown what her occupation is or her husband's.²

Applicant disclosed on his SCA that he has weekly contact with his parents and both siblings. He communicates by telephone and electronic media. Applicant disclosed that he provided his mother monthly financial support and estimated the total amount of support was \$40,000 over eight years. He explained that this support was provided when he was single. It is unknown if he has provided his family in Lebanon additional support since he completed his SCA. As of the date of his SCA and background interview with a

¹ Item 2; AE A, B, D, G. H.

² Item 2.

government investigator in October 2016, he disclosed that he visited his parents and siblings in Lebanon in 2010, 2011, 2012, 2013, and 2015. It is unknown if his wife and family travel with him when he visits his family in Lebanon. It is unknown if his family in Lebanon has visited him in the United States.³

In his answer to the SOR, Applicant disclosed he does not have any foreign financial interests or real estate in Lebanon. He stated to the best of his knowledge his family in Lebanon are not affiliated or hold positions with any military, social, political, or religious groups. He said that his contact with his family is casual and intermittent and limited in nature. He said that he travels to see his family, and his discussions are limited to familial and social discussion.⁴

Applicant purchased a house in the United States in 2012 and makes timely payments on his mortgage. He provided copies of scholarships and awards he received. He provided financial documents showing his investments, savings, and assets in the United States. He provided a November 2017 summary of credit report that shows there is no negative information.⁵

Applicant provided character letters from people who know him in the community and work with him. He is described as a person of high character, outstanding work ethic, hardworking, loyal, and respected.⁶ Applicant stated that he is loyal to the United States.⁷

Lebanon⁸

The United States Department of State warns U.S. citizens to avoid travel to Lebanon because of threats of terrorism, armed clashes, kidnapping, and outbreaks of violence near Lebanon's borders with Syria and Israel. There is also concern of the possibility of grave injury or death due to terrorist attacks and bombings.

Violent extremist groups operating in Lebanon include numerous U.S. government-designated terrorist organizations. Some have claimed responsibility for suicide bombings in Lebanon.

The Lebanon government cannot guarantee protection of U.S. citizens against attacks of violence, which can occur any time in Lebanon. There are numerous incidents

³ Items 2, 3. Applicant was visiting his family in December 2013 to January 2014. It appears it was one trip that carried over into the new year.

⁴ Item 1.

⁵ AE D, E, F, I, J.

⁶ AE C.

⁷ Item 1; AE A.

⁸ FORM.

of bombings along roads, at financial institutions and other commercial and residential areas that have killed and wounded a significant number of innocent people.

Kidnappings for ransom and political motives have also occurred and some are tied to terrorists and others to criminal organizations. The U.S. Government's ability to protect and help victims is limited. The U.S. State Department considers the threat to U.S. Government personnel in Beirut to be sufficiently serious to require personnel to live and work under strict security restrictions. The United States partnered with Lebanon's defense and law enforcement due to the significant internal and external terrorist threats in 2016. Throughout the year terrorist attacks occurred against Lebanese forces from renowned terrorist organizations. Hezbollah, operating in Lebanon, receives considerable support from Iran and continues its military role in Syria in support of the Bashar al-Assad regime. Iran's Islamic Revolutionary Guard Corps has had a presence in Lebanon since the early 1980s. Terrorist groups also operate out of Lebanon's 12 Palestinian camps.

Lebanon has significant human rights issues, which include torture and abuse by security forces; harsh prison and detention center conditions; limits on freedom of movement for refugees; lengthy pretrial detention; judiciary subject to political pressure; violation of a citizen's right to privacy; some restrictions on freedom of speech, religion, assembly, and the press; widespread violence against women; and societal, legal, and economic discrimination against women.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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.

AG ¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The United States Department of State warns U.S. citizens against travel to Lebanon because of threats by terrorist organizations and unsafe conditions, in addition to its inability to protect them. It also has serious concerns about many U.S. designated-terrorist groups that operate within the country. These terrorist groups are responsible for numerous bombings and attacks throughout Lebanon. Border regions of Syria and Israel also remain a concern. Lebanon's human rights issues are a serious concern. They include torture and abuse by security forces, harsh prison and detention center conditions, limits on freedom of movement for refugees, lengthy pretrial detention, judiciary subject to political pressure, violation of a citizen's right to privacy, and some restrictions on freedom of speech, religion, assembly, and the press.

Applicant's father, mother, brother, and sister are citizens and residents of Lebanon. As a good son, he provided his mother financial support over the years totaling about \$40,000. He visits his family about once a year. He has weekly contact with each family member by telephone or electronic media. Applicant's family residing in Lebanon creates a heightened risk and a potential foreign influence concern. AG ¶¶ 7(a) and 7(b) apply.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts:

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(a) the nature of the relationship 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 and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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 interests in favor of the U.S. interests; and

(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.

Applicant's family, which includes his mother, father, brother, and sister are citizens and residents of Lebanon. He has weekly contact with his parents and siblings in Lebanon and visits them about once a year. He provided financial support to his family in Lebanon over the years. Applicant's contact with his family is not casual and infrequent. AG ¶ 8(c) does not apply.

I have considered Applicant's close relationship with his family in Lebanon. It is an unsafe place for most people residing there, and especially for U.S. citizens. Terrorism and human rights abuses are significant. Terrorist groups conduct kidnappings, bombings, and other attacks on innocent people. I cannot find that it is unlikely that Applicant would be placed in a position of having to choose between his parents and siblings and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has been a U.S. citizen since 2016. His wife and children are citizens of the United States and his financial assets are located in the U.S. He is obviously a devoted son and brother. His brother's occupation is unknown. Although Applicant moved to the United States in 2007 and worked overseas for extended periods, he only recently became a citizen.

I have considered Applicant's expressed loyalty to the United States and his long-term employment. I considered the character letters, awards, and scholarships. However, Lebanon continues to have significant terrorist activity and human rights issues. Applicant's close relationship with his family in Lebanon, his annual visits to see his family, and his financial support for them is commendable. His familial ties are not minimal. It is too great of a burden to expect him to be loyal to the interests of the United States and resolve any conflicts in favor of the United States over those of his parents and siblings. AG ¶ 8(b) does not apply.

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 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), 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, but some warrant additional comment.

Applicant is 38 years old and has been a naturalized U.S. citizen since 2016. He has strong family ties with his parents and siblings who are citizens and residents of Lebanon. Applicant's ties to the United States are outweighed by his familial obligations and loyalty to his family in Lebanon. It is too great a burden to expect him to resolve a conflict of interest in favor of the United States instead of his family. The heightened risks raised by familial ties in Lebanon continue to raise security concerns under Guideline B, foreign influence, and are unmitigated. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge