



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



In the matter of:)
)
-----) ISCR Case No. 08-08236
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

September 25, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted for consideration a Security Clearance Application, Standard Form SF-86 (SF-86), dated March 4, 2008. On March 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 5, 2009, and, on May 12, 2009, answered the SOR by admitting all five allegations raised (SOR ¶¶ 1.a-1.e). Applicant requested a decision be made without a hearing. On July 2, 2009, Department Counsel prepared a File of Relevant Material (FORM) supported by six attached items. It set forth the government's case based on the SOR. In his argument, Department Counsel also moved that administrative notice be taken with respect to the

country of Lebanon, as presented by counsel's submission of 14 additional documents issued by the United States (U.S.) government.¹ Applicant received the FORM on July 23, 2009. He declined to submit any additional information in opposition to the FORM. The case was assigned to me on September 17, 2009, for administrative determination. Based upon a review of the limited case file and exhibits presented, Applicant failed to carry his burden and mitigate security concerns. Clearance is denied.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He has been employed as a linguist by the same company since March 2008. Prior to his present employment, he worked for a defense contractor providing linguistic support to the U.S. military. His transition to this field followed a career in the private sector retail industry. Applicant was born in Lebanon, but became a naturalized U.S. citizen in 2001. He is divorced and no children are noted. He has a diploma in bookkeeping.

Although Applicant chose an administrative determination, he offered few facts regarding his life, background, immigration, or family. His SF-86 notes that he married a U.S. citizen in the U.S. in 1995 and that he was widowed the following year. His work history in the U.S. is noted as dating back to 1999. The SF-86 cites to his 2001 naturalization and his second marriage in 2003, to a foreign national, which ended in divorce in 2007. He remarried in April or June 2008, after completing his SF-86. Applicant did not designate himself on the security application as a dual citizen.²

Applicant's mother and sister are citizens and residents of Lebanon. His 69-year-old mother is a widow. A long-term housewife, she has no affiliation with the government of Lebanon. She and Applicant speak by telephone every two to three weeks. His sister is 51 years of age. She used to own a clothing store, but is presently not employed. While Applicant notes she has no affiliation with the government of Lebanon, there is no indication as to her marital status or her associates. He speaks with her by telephone monthly. Applicant's 46-year-old brother is a dual citizen of Lebanon and Canada, currently residing in Saudi Arabia. He has no affiliation with any foreign government. Applicant speaks with his brother every two to three weeks and also communicates with him via the internet. Applicant visited his brother's daughter, who lives in Canada, in 2008. They speak once a month by telephone. Her husband is a Lebanese citizen. He works for a hotel and is not affiliated with a foreign government. Applicant's contact with him is minimal.

Applicant's current wife is 42 years of age. She is a citizen of Lebanon who resides in Canada and works as a restaurant cashier. Currently seeking refugee status, she is prohibited from leaving Canada until all of her papers are processed. She is not affiliated with a foreign government. Applicant speaks with her by telephone two to three times a day. They vacationed together in the late spring or summer of 2008,

¹ Absent objection by Applicant, Department Counsel's motion is granted.

² Applicant surrendered his expired Lebanese passport in 2007 and now travels on his U.S. passport.

around the time they married in Canada. The record does not indicate any other contact between the two. His wife has a large family and many cousins who are Lebanese, but Applicant does not know anything about them. His wife's sister is a Lebanese citizen awaiting dual-citizenship with Canada. She is a housewife residing in Canada with her husband, a security guard. Applicant has no idea whether his sister-in-law or her husband have any affiliations with a foreign government.

Lacking health insurance in the U.S., Applicant visited Lebanon from October 2001 through January 2002 for knee surgery. He recuperated under his mother's care. He returned the favor by visiting his mother between August 2004 and January 2005, when she was recovering from an illness. He neither initiated nor maintained any other social or business contacts while abroad. He was not questioned about his work. He has had no adverse contacts with law enforcement or customs on any foreign trip. There is no evidence that he was harassed, threatened, or approached by either government affiliates or members of anti-government factions while abroad. He does not believe that he is vulnerable to duress due to his foreign contacts or relations, nor does he believe his family would ever place him in a position in which he would be forced to choose between the U.S. and any faction or individuals. He is "proud to be a United States citizen . . . willing to serve this great country for the cause of freedom."³

In September 2008, a travel warning was issued by the U.S. Department of State concerning Lebanon, a parliamentary republic with which the U.S. seeks to maintain its traditionally close ties and whose independence, sovereignty, national unity, and territorial integrity the U.S. seeks to support. Lebanon has a constitution that affords its citizens many rights. The warning, however, alerts American citizens to "security threats and ongoing political violence in Lebanon" and "the threat of anti-Western terrorist activity" that exists in Lebanon.⁴ An April 2009 travel warning urges Americans to avoid all travel to Lebanon due to on-going political violence.⁵ U.S. government personnel working in Lebanon are required to live and work under strict security restrictions.⁶ That same advisory warns of terrorist activity threats due to the presence of Al-Qaeda and June al-Sham, as well as recent exercises of violence by Hizballah, a Lebanon-based terrorist group with an international presence. Finally, there is evidence that terrorists based in Lebanon have attempted to acquire sensitive U.S. industrial products. In February 2006, a dual citizen of Lebanon and Canada, who supported Hizballah, was found guilty of conspiring to export sensitive military equipment from the U.S. to Hizballah factions through a Canadian import/export shipping company.⁷ A similar

³ Letter, Applicant's SOR Answer, dated May 10, 2009.

⁴ FORM at 7 and appendix (U.S. Department of State, *Travel Warning: Lebanon*, Sep. 10, 2008, at 1, concerning non-government sanctioned activities within Lebanon and efforts to undermine both Lebanon's sovereignty and security. Such facts are hereby incorporated into this decisions as findings of fact.

⁵ FORM Appendix (U.S. Department of State, *Travel Warning: Lebanon*, Apr. 24, 2009, at 1).

⁶ *Id.*

⁷ Department of Justice Press Release, *News Release*, dated Feb. 13, 2006.

attempt was uncovered in 2007 when a U.S. citizen attempted to transfer products manufactured by a U.S. defense contractor to an agent of Hizbollah in Lebanon.⁸

Policies

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

These guidelines are not inflexible rules of law. 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. Under 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 access to classified information will be resolved in favor of 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ⁹ The burden of proof is something less than a preponderance of evidence.¹⁰ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.¹¹

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 protect or

⁸ Department of Justice News Release, *Michigan Man Pleads Guilty to Supporting Hizballah*, dated Nov. 29, 2007.

⁹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 Executive Order 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹⁴ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, the following guideline from AG ¶ 6 is the most pertinent to the evaluation of the facts in this case:

Guideline B – Foreign Influence. *The Concern:* The concern under this adjudicative guideline is that foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. The adjudication 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those that would mitigate security concerns, are set forth and discussed in the analysis below.

Analysis

Applicant is seeking a security clearance as part of his employment with a U.S. defense contractor, where he works as a linguist and cultural advisor. Applicant’s mother and sister are citizens and residents of Lebanon, a foreign country posing security concerns due to on-going political violence, the presence of terrorist forces whose interests are antithetical to those of the U.S., and recent activity by terrorist forces within that country to gain access to sensitive industrial materials. Additionally,

¹² *Id.*

¹³ *Id.*

¹⁴ Executive Order 10865 § 7.

his brother is a dual-national of Lebanon and Canada, currently residing in Saudi Arabia. Applicant's wife is a Lebanese citizen currently seeking refugee status in Canada. Further, his niece and Applicant's sister-in-law maintain connections with Lebanon. Such facts give rise to Foreign Influence Disqualifying Conditions (FI DC) 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information"). With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Here, Foreign Influence Mitigating Condition (FI MC) AG ¶ 8(a) requires that circumstances make it unlikely that an applicant will be required to choose between the interests of a foreign individual, groups, organizations, or government and the interests of the U.S. In his materials, Applicant states that this is the case. In choosing an administrative determination, however, he limited his input to his written submissions. Those documents fail to describe what circumstances would make such a choice unlikely. Consequently, this FI MC cannot apply.

Applicant described the frequency of his contact with his family members. No facts were offered to help depict the depth of his relationships with his family members. The lone exceptions are the fact he recently remarried and the fact he and his mother helped each other recuperate during periods of medical need. Moreover, although Applicant does note his pride in being a U.S. citizen and his willingness to serve this nation, he offered no information regarding his ties to his community or his commitment to his current residence and situation. While there are no allegations questioning Applicant's loyalty or his sincerity in wishing to serve the U.S., he presented insufficient evidence upon which to judge whether AG ¶ 8(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 interest in favor of the U.S. interest") or 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") applies. No other FI MC applies.

Whole Person Concept

Under the whole person concept, an 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(a): "(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 public trust position 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, as well as the “whole person” factors noted above. Here, little is known about the Applicant’s life before his 2001 naturalization. Today, he is a mature, educated man with linguistic skills that are unique and highly sought within the defense community. While there is no evidence his family members are affiliated with a foreign government, there is similarly no evidence that they are immune from the sway of terrorist forces based in or around Lebanon. The scant evidence introduced by Applicant attempts to refute the foreign influence security concerns raised, but it is insufficient to mitigate those concerns.

In choosing an administrative determination, an applicant binds the administrative judge exclusively to the information introduced into the official record. Questions cannot be posed that might resolve lingering concerns. Consequently, an applicant’s submissions must anticipate all the information needed for a full consideration of whether any mitigating conditions apply. Otherwise, an applicant risks failing to meet the burden placed squarely on those seeking access to privileged information.

Here, Applicant’s statements may paint a picture of his family members and his interaction with them. That picture, however, lacks depth and detail. While there is no basis to doubt Applicant’s honesty or sincerity, the ultimate burden remains on Applicant to mitigate foreign influence security concerns. His submissions failed to carry that burden. As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁵ Consequently, I conclude that it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

¹⁵ *Id.*

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge