



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-08790
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: David Price, Esquire

October 24, 2008

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on February 13, 2006. On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing 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 April 1, 2008. He answered it on April 14, 2008 through his Counsel and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2008. DOHA issued a notice of hearing on July 16, 2008. I convened the hearing as scheduled on August 14, 2008. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified on

his own behalf, and presented the testimony of two witnesses. Counsel submitted Applicant's Exhibit (A-E), which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 25, 2008. Eligibility for access to classified information is granted.

### **Procedural and Evidentiary Rulings**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of Lebanon (Tr. 12). The request and the attached documents are included in the record as Hearing Exhibit I. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.<sup>1</sup>

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a-1.i. His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 46-year-old business man who owns a consulting firm working for a defense contractor. He has worked on information management systems and engineering applications as a consultant on state government projects for 20 years. His work involved sensitive but not classified information. He had an interim clearance for one year in 2007 (Tr. 9).

Applicant was born in and educated in Lebanon. He attended the American University in Beirut, earning a B.S. in geology (Tr. 68). He was accepted into graduate school in the United States in 1984. He received his PhD in 1994 from an American university. He has resided in the U.S. for 24 years. Applicant has been a naturalized citizen for 17 years (Tr. 73).

Applicant's last visit to Lebanon was in August 1999 and contrary to his family's wishes. His father was very ill and he wanted to visit him before he died. He experienced the danger in Lebanon when a passenger on his plane was taken hostage. Applicant cut his visit short and has never returned to Lebanon (Tr.). He uses his U.S. passport when he travels. His Lebanese passport expired in 1997 and was surrendered to the Lebanese government (AE A). He wishes to formally renounce his Lebanese citizenship. He has obtained the information concerning this formal process. A letter from the Secretary of State is required.

Applicant's parents were born in Lebanon. His father is deceased. His mother, who is 73, lives with him in the U.S. She is a dual citizen of Lebanon and the U.S. She

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<sup>1</sup>Counsel did not present a request for administrative notice for either France or Cameroon. Thus, I do not find or address any issues for those countries.

rarely visits Lebanon (Tr. 77). She receives a social security check from Lebanon and a social security from the U.S. Applicant provides for all of her daily living expenses.

Applicant's mother inherited property in Lebanon when her husband died. Applicant is her only son and will inherit the home upon his mother's death. The value of the property is approximately \$180,000 (Tr. 77). Applicant believes he will dispose of the property when his mother dies. He has no interest in keeping it and considers it a burden rather than an asset (Tr. 75).

Applicant's sister and her husband live in Lebanon and visit the U.S. annually. They are dual citizens of Lebanon and France. They have three adult children who are U.S. permanent residents. They plan to retire in the U.S. (Tr. 79). His sister has applied for permanent residency and wishes to become a U.S. citizen (Tr. 80). She visits her mother and her grown children in the U.S. about once a year (Tr. 81). Applicant sometimes speaks to his sister on the phone if she calls their mother. He has never visited her in Lebanon (Tr. 96). His sister does not work and her husband is a doctor.

Applicant has another sister who is divorced and lives in Cameroon. She owns a small business in that country. When his sister was in the process of obtaining a divorce many years ago, Applicant provided some financial help (Tr.82). She left Lebanon about ten years ago. He had not been in contact with her for many years but did visit her last year in Cameroon.

Applicant is divorced with two grown children. Since 2003, he has lived with his significant other who is a citizen of France and Lebanon. His partner was educated in France and is now a permanent resident of the U.S. (Tr. 44). He intends to apply for citizenship in five years (Tr. 46). His partner also works for Applicant's company.

Applicant's partner (P) has relatives in Lebanon. P's mother and three sisters live in Lebanon and are citizens of the country. P's mother is retired and lives at home and his father is deceased (Tr. 48). P provides some financial support for his mother of approximately \$5,000 a year. P's family members are aware of his work with Applicant (Tr. 51). Applicant's partner credibly testified that Applicant has a great pride in his U.S. citizenship and desires to help the government with his projects. P does not believe that Applicant could be coerced or influenced into doing something that would harm the U.S. interests because his loyalties are with his children and his mother in the U.S. P also owns property in France. Applicant met P's two sisters when they visited the U.S. Applicant met P's mother on three occasions in France on vacation.

Applicant purchased a vacation home in France in 2003 (Tr. 84). He has a mortgage for the house and he has a bank account in France. He travels there every year for vacation with P. The property is rented during the rest of the year. He has traveled to France every summer from the last 1990's to the present. His adult children visit with him there and they have a family vacation for a few weeks (Tr. 87). However, one trip to France was with representatives from a U.S. geological survey team for work purposes.

Applicant has substantial real estate in the U.S. The value is in the range from \$6 million to \$8 million. He has acquired many properties (AE B). He buys the properties for investment purposes. He remodels them and then rents them. He has approximately 50 units. He estimates the gross income from the real estate is about \$250,000 a year. His consulting firm is ten years old and has two principal offices. His net profit in 2007 was close to a million dollars (Tr. 92).

Applicant's academic advisor for his PhD testified at the hearing that Applicant has worked hard on a number of state and county projects over the past years. Applicant advanced in his field and is reliable and very trustworthy, according to this professor who has known him for 24 years. He knows that Applicant has been involved with confidential information and has never had any problems with handling security matters (Tr. 27-34).

Applicant is described by his former colleagues as possessing a high degree of responsibility. He is objective in situations and evaluates the multiple facets of any issue. He is committed to his profession and his business. He conducts himself with professionalism. He operates his business with honesty, decency and humanity (AE D). Applicant's judgment, knowledge, integrity and credibility is highly valued by his peers in the private sector as well as the government sector. He is an expert in the field of information technology. A fellow researcher and businessman who has known him since his graduate school days commends Applicant for his reliability and hard work in the field of research and development for the environment in the U.S. (AE D). Applicant is highly recommended for a security clearance from his government clients and professional peers. No one questioned his loyalty to the U.S.

Applicant was candid and straightforward at the hearing. He expressed disdain for his home country and has no desire to have any connection with it. He does not consider himself a citizen of Lebanon. In fact, he stated it is an insult for him to be considered a dual citizen. He is a U.S. citizen and states his roots are now in the U.S. He explained it was a very serious consideration for him to become a U.S. citizen (Tr. 98). His children are U.S. citizens and they are his closest family (Tr. 99). When he learned about the procedures for renunciation of his Lebanese citizenship, he contacted an attorney and learned more about the process (Tr. 101). There are many steps and hurdles to obtain the necessary documentation to satisfy the Lebanese government

Applicant credibly testified that he has no plans to return to Lebanon. He has never voted in Lebanese elections, joined any political party, or worked for the Lebanese government. To his knowledge no one in his family has been contacted by any government agents or terrorist groups (Tr. 95).

Applicant explained that it is his personal responsibility to safeguard classified information and if there was any threat to national security based on pressure to him or his family, he would take appropriate measures to contact his assigned agent. He described a situation in France where he was approached by two strangers and asked to convert some Swiss money into dollars. He believed it was a scam to obtain money. He reported it to his security agent immediately. He then called the U.S. Embassy in France.

He spoke to a security investigator and was thanked for bringing this incident to their attention.

I take administrative notice of the following facts about Lebanon. Lebanon's government is a parliamentary democracy. Lebanon and the United States have a long-standing friendly relationship. It has been the policy of the United States to help Lebanon preserve its independence, sovereignty, national unity, and territorial integrity.

Lebanon is 95% ethnic Arab. Its population is comprised of various Muslim sects, Christian groups, and Druze. The three largest population groups are Shi'a and Sunni Muslims and Maronite Christians. Lebanon became the situs of several terrorist organizations over the past 30 years that have engaged in armed conflict with Israel and Western countries. The Lebanese government recognizes those organizations as legitimate resistance groups. Lebanon exempts "legal resistance" groups from money laundering and terrorism financing laws. The Lebanese government recognizes Hezbollah, a terrorist group, as "a legitimate resistance group." Hezbollah derives its power and influence from Lebanon's Shi'a community, which makes up about one-third of Lebanon's population. Hezbollah maintains offices in Beirut and elsewhere in the country and has elected deputies in Lebanon's Parliament. It also operates a comprehensive system of health and education services in several parts of the country.

Even though Syria withdrew its military forces from Lebanon in April 2006, it maintains a covert intelligence presence in Lebanon and offers support for and smuggles arms to Hezbollah and Palestinian terrorist groups operating in Lebanon. The Lebanese government's inability to exercise authoritative control in the Hezbollah-dominated south of Lebanon and inside Palestinian-controlled refugee camps enables terrorists to operate freely in Lebanon. Hezbollah's continued attacks on Israel continue to create instability in the region.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (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 over-arching adjudicative goal is a fair, impartial and common

sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. 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 (4th 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 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. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline B (Foreign Influence)**

The security concern relating to Guideline B is set out in AG ¶ 6 as follows:

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. 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 disqualifying condition may be raised by “contact 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.” AG ¶ 7(a). A disqualifying condition also may be raised by “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.” AG ¶ 7(b). Finally, a security concern may be raised if an applicant is “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion” AG ¶ 7(d).

Applicant’s mother is a dual citizen of Lebanon and the U.S. and lives with him. His sister and her husband live in Lebanon and are citizens of Lebanon and France. His partner has lived with him since 2003 and has relatives in Lebanon. Applicant sees his sister when she visits the U.S. and speaks to her on the phone when she calls her mother. His other sister was born in Lebanon but has not lived there for over ten years. She lives in Cameroon. These relationships are not *per se* a reason to deny Applicant a security clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members.

In determining if a heightened risk exists, I must look at Applicant’s relationship and contacts with family members as well as the activities of the government of Lebanon and other aspects of life in Lebanon such as crime and terrorism. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). Applicant’s mother lives with him in the U.S. and is a U.S. citizen. She receives a social security check from the government of Lebanon. One sister lives in Lebanon with her husband. He sees his sister when she visits the U.S. He sometimes talks to her on the phone when she calls their mother. P is a permanent resident in the U.S. but was born in Lebanon and has his family in Lebanon. Applicant has met P’s family on one or two occasions in the U.S. or France. This contact creates a risk of foreign pressure or attempted exploitation because there is always the possibility that Lebanese agents or terrorists may exploit the opportunity to obtain information about the U.S. His connection to his sister in Lebanon and P also creates a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help them by providing sensitive or classified information.

Since the government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “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 U.S.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, AG 8© “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.”

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.” 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). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that 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, or the country is known to conduct intelligence operations against the U.S.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant’s testimony at the hearing showed his willingness to sever ties with Lebanon. He has no plan to visit the country. He has no Lebanese passport. He is renouncing his Lebanese citizenship. He has lived in the U.S. for 24 years. He has substantial personal, professional and financial ties to the U.S. His sister who lives in Lebanon is planning to retire to the U.S. His partner of recent years has relatives in Lebanon but Applicant has no ties with them. Applicant has substantial investments in the U.S. He desires to

continue his work with county and government projects. His two children live in the U.S. He is closest to them. As such, his testimony supported this mitigating condition, which mitigates all disqualifying conditions.

### **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. An 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 security clearance must be an overall common sense 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. Applicant is a mature, well-educated, professional. He has lived in the U.S. for 24 years. He became a naturalized citizen 17 years ago. He received his master's and PhD in the U.S. He has consulted on many state government projects. He has substantial personal and professional ties with the U.S. He has substantial financial interests in the U.S. He has been involved with proprietary information. He has his own business and has established strong professional ties. He is recommended highly by professional peers and clients, an indication of their trust in him. He clearly has established strong connections to the U.S.

Applicant's mother lives with him in the U.S. and is a U.S. citizen. His father is deceased. He will inherit property in Lebanon when his mother dies but he is not interested in keeping the property. The value of the property is minuscule compared to Applicant's multi-million dollar financial resources in the U.S.

His sister who lives in Lebanon has three children who are permanent residents of the U.S. Applicant sees his sister when she visits the U.S. He does not visit her in Lebanon. She plans to retire to the U.S. with her husband. She is not involved with the government or military in Lebanon. Her children are living in the U.S. and are citizens.

Applicant's partner P is a permanent resident in the U.S. P does not travel to Lebanon. P provides financial help to his family living in Lebanon. Applicant has only casual and infrequent contact with P's family in Lebanon.

After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Influence:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e;	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Noreen A. Lynch  
Administrative Judge