

KEYWORD: Foreign Influence; Foreign Preference; Outside Activities

DIGEST: Applicant, a 36 year old employee of a major defense contractor, mitigated security concerns regarding foreign preference from having a Polish passport by the fact that it has expired. He does not intend to renew it. Also, he mitigated allegations of management and financial participation in his mother's business in Lebanon by documenting his discontinuance of those activities. Applicant failed to mitigate foreign influence security concerns arising because of his mother's citizenship and residence as well as business in Lebanon. Also of concern are three siblings who are citizens of Lebanon and either live there or are temporarily in the U.S. and are dependent on income from their mother. Clearance is denied.

CASENO: 06-08562.h1

DATE: 08/31/2007

DATE: August 31, 2007

In Re:)	
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-----)	ISCR Case No. 06-08562
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 36 year old employee of a major defense contractor, mitigated security concerns regarding foreign preference from having a Polish passport by the fact that it has expired. He does not intend to renew it. Also, he mitigated allegations of management and financial participation in his mother's business in Lebanon by documenting his discontinuance of those activities. Applicant failed to mitigate foreign influence security concerns arising because of his mother's citizenship and residence as well as business in Lebanon. Also of concern are three siblings who are citizens of Lebanon and either live there or are temporarily in the U.S. and are dependent on income from their mother. Clearance is denied.

STATEMENT OF THE CASE

On September 25, 2006, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, received November 2, 2006, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on March 26, 2007. A Notice of Hearing was issued April 6, 2007 for a hearing held on April 26, 2007. The Government introduced three exhibits and Applicant introduced 17 exhibits. All were accepted into evidence. The government requested that administrative notice (AN) be taken of nine official government documents. Applicant testified on his behalf. The transcript was received on May 9, 2007. The record was left open for submission of additional evidence until May 29, 2007, and extended until July 15, 2007. Two sets of document were submitted by Applicant on June 13, 2007, and July 12, 2007. Both were admitted without objection.

FINDINGS OF FACT

_____ Applicant has admitted all but one allegations under Foreign Influence (Guideline B), denied the allegation under Foreign Preference (Guideline C), and admitted the allegations under Outside Activities (Guideline L). He offered explanatory information in his answer, at the hearing, and in his post-hearing submissions. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 36-year-old employee of a principal defense contractor working since 2004 as an engineer. He holds B.S. and Master's degrees in electrical engineering from a major state university system and is studying for an M.B.A. He is the eldest child of a Polish-born father and a Lebanese mother. In 1968 his father was a Polish merchant seaman on a Russian ship that was

docked in Beirut, Lebanon, when he jumped ship, came ashore, and sought asylum at the U.S. embassy. It was granted and, during the time the asylum and immigration documents were being processed, he married Applicant's mother, a citizen of Lebanon, who was born in Jamaica.

The family emigrated to the U.S. in 1969 and Applicant was born in 1971. Several months after his birth the family returned to Beirut to help care for his maternal grandparents. Three more children, two daughters and another son, were born to the family while they lived in Lebanon. Since Lebanese citizenship could be acquired only through a Lebanese father the three younger children were stateless. Their father acquired Polish citizenship for them, and they are also now Lebanese citizens.

The family was in Lebanon when the sectarian war broke out in 1974. It was difficult to leave so the family remained. His mother began a business to support the family. Applicant attended a Catholic school in the Christian section of Beirut for 13 years during which time their home was bombed twice, once in the sectarian fighting and once by Syrian occupiers. Applicant's parents separated, and his father returned to Poland after the Cold War ended in 1989. He died there in 2001. Applicant returned to the U.S. in 1989 at age 18 and enrolled in a university. He worked in the defense industry during the first Gulf War for a foreign owned company doing business in the U.S. Since his father's death, Applicant is the only member of the family with U.S. citizenship.

Applicant's sisters are both Ph. D. candidates in universities in the U.S. and France. His brother lives in Lebanon with his mother and owns a business based in Beirut doing business in energy products in South Africa. He plans to move the business to another country. None of his siblings are married.

Applicant also obtained a Polish passport in 1995 at his father's request both as a gesture to his father's homeland, and to lessen any likelihood of difficulties in entering Lebanon with a U.S. passport. He used it only once during a travel ban to Lebanon for U.S. citizens in the 1970's. It expired in 2005 and he does not intend to renew it (Tr. 123). He visited Poland once at age seven to meet his grandparents and again in 2001 for the funeral of his father. He has a strong preference for the U.S. He used his U.S. passport for all travels the past 15 years including trips to Lebanon and Syria. He speaks Arabic but does not know Polish.

Applicant's mother has a successful advising and training business based in Beirut with ten employees. She began the business in 1989 advising and training companies in the middle east about networking, business management, and human resource practices. Many of her clients are charities and NGOs. Half of her clients are in Lebanon, and the other half are primarily in Dubai, and the United Arab Emirates. She intends to retire and dispose of the business in five years after her two daughters have finished graduate school since she provides their financial support. She now lives half of the year in Jordan because of the difficulties in Lebanon caused most recently by the war in 2006 between the forces of Hizballah and Israel. She visits the U.S. regularly once or twice a year to see Applicant and his family. She owns property in Lebanon valued at over \$500,000. His brother also visits the U.S. frequently. The family comes to the U.S. for holidays and christenings of Applicant's three young children.

Applicant worked for his mother's company full time as a subcontractor between 2002 and 2004. He organized a business in the U.S. which he used as a vehicle to provide support for her

company. During that period he traveled to Lebanon five or six times a year. The trips also took him to Jordan, Syria, Finland and France to visit clients and affiliates. He also continued to provide some services to her company between 2004 and 2006 after he went to work for his employer. His income from his mother's company during that period was approximately \$6,000. He also had certain financial authority for the business including a power of attorney which has been revoked since the hearing in this matter (Post-hearing submissions 1 and 2).

Applicant has never held a security clearance, but his career opportunities are severely limited in his company without one. He is financially independent of other members of his family and they are independent of him. His annual salary is \$130,000. He owns his own home and has \$200,000 in equity. He has various savings and brokerage accounts valued at approximately \$100,000 including education accounts for his three children.

Applicant knows the need to preserve U.S. technology. He loves his work, and is very proud of his U.S. education. He appreciates the responsibilities which he has been given. He is highly regarded by his company through their evaluations and by his supervisors in their letters of support. They believe he has a bright future with the company (Exhs. C, D, H, and I) .

Lebanon is a country with a historic past that has had a functioning multi-party government that have recognized diverse ethnic and religious groups giving them participation in the government. It has long been known for its tolerance of divergent views. However, since 1975 it has been riven by civil wars, outside attacks on its territory, and occupation by Syria. The U.S. is supportive of the government and works to help it enforce its laws and secure its borders. However, because of various private armies there is doubt as to whether the government of Lebanon has de facto control over its own territory (AN 2, 3, and 4)

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

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Adjudicative Guidelines (AG) ¶ 2 (a) Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.

See Egan, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue a clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” AG ¶ 2 (b) “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Guideline B: Foreign Influence

_____ Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member 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 ¶ 7a). Based on the evidence of record, including Applicant’s acknowledgment of family members living abroad, the Government established a basis for concern over foreign influence. The Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

By virtue of the relationships of the foreign family members, Applicant’s contacts, cannot be deemed casual. Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a). The other relevant MC is that the individual has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. (AG ¶ 8b). While I believe Applicant could qualify under that MC because of his long residency in the U.S. since age 18 thus having lived all his mature life in the U.S., his extended complex and internationalized family relationships pose a myriad of unanswered questions about possible pressures that could be brought to bear on him. While I have no concerns about Applicant or his relatives in view of their family history and present work, they live in a troubled part of the world with many hostile groups. While their own specific community is not in question, they are surrounded by others such as terrorist organizations, occupiers, and would-be occupiers who pose a threat to others in the area and could cause pressure to be brought on him..

Guideline C: Foreign Preference

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be

prone to provide information or make decisions that are harmful to the interests of the United States (AG ¶ 9). Conditions that could raise a security concern and may be disqualifying include the possession of a current foreign passport (AG ¶ 10a 1).

Security concerns may be mitigated by a providing evidence that the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. (AG ¶ 11e) I conclude from the evidence submitted showing expiration of the passport and lack of intent to renew it by Applicant, that the allegation under Guideline C has been mitigated.

Guideline L: Outside Activities

_____The applicable Guidelines cited in the SOR concerning Outside Activities-Guideline L provides as disqualifying conditions (DC) involvement in certain types of outside employment or activities if they pose a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information (AG ¶ 36). Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with a foreign country; any foreign national; or a representative of any foreign interest (AG ¶ 37 a 1,2, and 3).

Conditions that could mitigate security concerns (MC) include:

- 1 Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities or with national security interests of the U.S.(AG ¶ 38 a).
- 2 The individual terminated the employment or discontinued the activity upon being notified that it is in conflict with his or her security responsibilities. (AG ¶ 38 b).

_____The type of work done by Applicant for his mother and the work of her company is not of a type to pose a conflict with his security responsibilities for his employer. He has terminated his legal relationships in the U.S. with his mother's company. I conclude that he has successfully mitigated the security concerns under Guideline L.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a person of substance who is well educated and ambitious. He has a responsible position of trust, and is doing an excellent job for his company. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S. He has established a successful life here building financial ties to the U.S. He has a strong financial stake

in the U.S. He has no deference to or loyalty to either Lebanon or Poland. However, the multitude of family connections and uncertainties in a tumultuous part of the world where possibilities exist to bring pressure on Applicant leads me to conclude that it is premature at this time to grant a clearance to him because of the potential for pressure or coercion.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

_____ Paragraph 1. Guideline B: 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.: For Applicant
- Subparagraph 1.f.: For Applicant
- Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

- Subparagraph 2.a.: For Applicant

_____ Paragraph 3. Guideline L: FOR APPLICANT

- Subparagraph 3.a.: For Applicant
- Subparagraph 3.b.: For Applicant
- Subparagraph 3.c.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge

