

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant has successfully mitigated the security concerns of foreign preference and foreign influence raised by his connections to Lebanon. Also, he explained and rebutted the allegations that he provided deliberately false answers in response to questions on a security-clearance application. Clearance is granted.

CASENO: 02-30363.h1

DATE: 02/21/2006

DATE: February 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30363

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Julie R. Edmonds, Esq., Department Counsel

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Terry L. Elling, Esq.

SYNOPSIS

Applicant has successfully mitigated the security concerns of foreign preference and foreign influence raised by his connections to Lebanon. Also, he explained and rebutted the allegations that he provided deliberately false answers in response to questions on a security-clearance application. Clearance is granted.

STATEMENT OF THE CASE

On December 22, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline C for foreign preference, Guideline B for foreign influence, and Guideline E for personal conduct (falsification). Applicant replied to the SOR on February 16, 2005, and requested a hearing. The case was assigned to me July 7, 2005. With agreement of counsel, a notice of hearing was issued scheduling the hearing for September 15, 2005. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript October 5, 2005.

On January 24, 2006, I informed counsel that I intended to take administrative or official notice, on my own motion, of certain facts set forth in Appellate Exhibit I. I gave counsel an opportunity to review the matters and file objections. Counsel for each party filed a response (Appellate Exhibits II and III). After further consideration, I decided not to take notice of those facts.

FINDINGS OF FACT

In his Answer, Applicant admitted the foreign preference and influence allegations in subparagraphs 1.a, 1.b, 2.b, 2.c, 2.d, 2.e, he admitted in part and denied in part subparagraph 2.a, and he denied the falsification allegations in subparagraphs 3.a, 3.b, and 3.c. In addition, he provided a brief explanation for each admission or denial. Applicant's admissions to the SOR allegations are incorporated herein. In addition, I make the following findings of fact:

Applicant is a 44-year-old unmarried man who is seeking a security clearance for employment with a defense contractor. He was hired in April 2004 to work as a linguist and analyst in a media analysis and public diplomacy program. Born in Spain, he is a dual citizen of the U.S. and Lebanon, as he obtained U.S. citizenship via the naturalization process in December 1991. Applicant is a highly-skilled linguist who served honorably in the U.S. Army and worked on behalf of the U.S. government in the Middle East, including Iraq.

A. Applicant's family ⁽²⁾

Applicant's immediate family members were all born outside of the U.S. Applicant's grandfather had settled in Gambia where he owned and operated a textile import/export business. Applicant's father was born in Gambia, Africa, but retained the Lebanese citizenship of his father, Applicant's paternal grandfather. Applicant's father and paternal grandparents are now deceased and were Lebanese citizens when they died.

Applicant's mother was born in the Canary Islands, Spain. She became a naturalized U.S. citizen in 1988. Applicant's maternal grandparents, who were Spanish citizens and later became U.S. citizens, were living and working in Liberia at the time of Applicant's mother's pending birth. The grandmother departed Liberia seeking proper medical care toward the end of her pregnancy, and hence, Applicant's mother was born in Spain.

Applicant's parents met in Lebanon in the 1950s and were married in 1955. After marrying, they moved to Gambia, Africa, where Applicant's father worked in the family import/export business. While living in Gambia, Applicant's mother traveled to Spain, her place of birth, for the birth of Applicant's older sister and Applicant. In about 1963, the family relocated to Beirut, Lebanon, where the entire family lived until 1978 when Applicant, his mother, and brother immigrated to the U.S. Applicant's father remained in Lebanon to run the business. Since her husband's death in 1999, Applicant's mother typically spends part of the year in the U.S. with her family and part of the year in Lebanon.

In November 1976, before immigrating to the U.S., the then 15-year-old Applicant and his father were the victims of kidnaping (Transcript at 168 - 71). Applicant and his father were held for about a day or less and they were released unharmed. It is unclear who did the kidnaping, but its origins appear to be some type of dispute between local villages.

(3)

This matter was not well developed during the hearing.

Applicant's older sister, who was also born in Spain, immigrated to the U.S. in 1979. She became a naturalized U.S. citizen in 1990. She currently lives in the U.S. with her husband, who is a naturalized U.S. citizen, and their two children. The sister's husband works as a linguist on a government contract.

Applicant's younger brother was born in Lebanon. He immigrated to the U.S. with Applicant and their mother in 1978. He became a naturalized U.S. citizen in 1988. The brother is married to a Lebanese citizen and they have two children. The brother is currently employed by a Lebanese computer company. The brother lived and worked in Lebanon until September 2004 when he moved to the United Arab Emirates (UAE) incident to his employment. The brother and his family currently live in the UAE.

Applicant made more than a dozen trips to Lebanon from October 1992 to December 2003. Several of the trips occurred when he was assigned in Germany or Iraq as a U.S. soldier (his military service will be discussed below). Likewise, several of the trips occurred when he was working as a contractor in Saudi Arabia or the UAE. Given the trips were relatively short, it was considerably less expensive to travel to Lebanon as opposed to traveling to the U.S.

Applicant lived in Lebanon from July 1994 to June 1995 helping his family recover from the civil war. After his father's death in 1999, Applicant traveled to Lebanon to assist in resolving his father's affairs. Applicant and his siblings are making some sort of tax payments on his father's estate (the family home). The payments are voluntary, as Applicant is not required by law to make the payments. Applicant has no plans to claim any share of his late father's estate.

Applicant's uncle, his father's brother, is a citizen and resident of Lebanon. He ran the family business after the death of Applicant's father. The uncle and his family reside in Lebanon. Applicant maintains contact with his uncle. The last time he spoke with his uncle was Christmas 2004.

Applicant has a number of extended family members living in the U.S. His maternal grandmother is a naturalized U.S. citizen who lives in the U.S. His maternal grandfather passed away in 1988, and he was a naturalized U.S. citizen when he died. Applicant's maternal aunt is a naturalized U.S. citizen and she resides with Applicant's grandmother. Applicant's paternal uncle is a naturalized U.S. citizen living in the U.S. The uncle is engaged in the import/export business. Another paternal uncle is a naturalized U.S. citizen who lives in the U.S. This is the uncle Applicant worked for in the bakery/deli business, which is discussed in the employment history section.

Applicant has numerous distant cousins who are citizens and residents of Lebanon. He does not maintain any contact

with them, aside from his paternal uncle mentioned above. The uncle is not employed by or connected with the Lebanese government, nor is he connected with any organization in Lebanon that may be involved with terrorism.

B. Applicant's education

Arriving in the U.S. at the age of about 17, Applicant was a student for a brief period at a state university. In 1979, the family moved to another area of the U.S. where they have since remained. Applicant attended, on a periodic basis, a private university from August 1979 to December 1988. He earned a B.A. degree in history and political science. From March 1984 to September 1984, and then again from June 1985 to October 1985, Applicant was a student at a language school in Germany where he studied German. From December 1986 to November 1987, Applicant stayed with his parents in Lebanon while helping them move from the U.S., and he took a break from school as well.

C. Applicant's military service

In 1988 or 1989, Applicant enlisted in his State's National Guard under the delayed entry program. He completed basic training and advanced individual training as an armored tank crewman in 1989. He was scheduled to start monthly drills with a guard unit, but he was called to active duty with the U.S. Army in November 1989. From March 1990 until about April 1991, Applicant was assigned to an armored unit in Germany. Due to his language skills, Applicant was detailed to a nearby military intelligence unit. After obtaining U.S. citizenship in 1991, the Army granted Applicant a top-secret security clearance in October 1992 (Exhibit 2-DA Form 873).

From November 1992 to May 1993, Applicant was deployed to Iraq in support of Operation Provide Comfort. He served as an interpreter and translator for the Military Coordination Center (MCC) at the headquarters of the Combined Task Force. He was awarded the Defense Meritorious Service Medal for his outstanding performance of duties in this rather demanding and challenging environment. The citation to the medal notes that Applicant, a specialist (paygrade E-4), worked in a warrant officer's position where "he acted on a daily basis as the voice of the command in high level consultations with Northern Iraqi military and civilian leaders" (Exhibit A9).

After a short break, Applicant was deployed again to Iraq and worked at the MCC as an interpreter and protocol advisor from June 1993 to October 1993. He was awarded the Joint Service Commendation Medal for his outstanding performance of duties. The citation to the medal notes that because of Applicant's skills and professionalism, he was "an indispensable advisor to the Commander" and he held a position of trust far greater than that normally given a soldier of his rank and experience (Exhibit A10).

After completing this assignment, Applicant returned to Germany and then to the U.S. where he was honorably discharged in November 1993 (Exhibit A11). During his military service, Applicant held a top-secret security clearance without a negative incident or problem, and he was never subject to disciplinary action under the UCMJ.

D. Applicant's employment history

Immediately upon his return to the U.S., Applicant went to work as an assistant manager for his uncle in a fruit import/export and bakery/deli business. He worked there until about March 1999 when he was hired an independent contractor providing language services to the U.S. State Department. He worked as an escort and interpreter for the Antiterrorism Assistance Program and he performed his duties well (Exhibits A7 and A8). He left this job in August 1999 for another opportunity.

In September 1999, Applicant started working as a linguist for a company that provides language consulting services via a contract to the federal government. It is this position that generated the security-clearance application (Exhibit 1) that is the basis for two falsification allegations. Based on his language skills and military background, the company wanted to get Applicant hired as quickly as possible so he could be deployed to a military unit in Saudi Arabia. Applicant arrived in Saudi Arabia on or about September 19, 1999, and went to work for a detachment of the U.S. Air Force's Office of Special Investigations (OSI). As a linguist, Applicant assisted the OSI in liaison contacts with local nationals where his language skills were necessary. He also translated Arabic newspapers and other documents for the OSI. As things progressed, Applicant was called on to provide advice on local cultural and political matters. Applicant worked in Saudi Arabia until July 2001 when he was transferred to another OSI detachment in the UAE where he performed similar duties. His job in the UAE ended in October 2002 when his employer lost the contract.

From November 2002 to January 2003, Applicant was unemployed and lived with his family in the U.S. Applicant was then hired as a linguist by another defense contractor requiring him to relocate to another part of the U.S. He worked in various administrative capacities until June 2003 when he was recommended for assignment to Iraq. Applicant worked as the interpreter for a U.S. senior-level official in security affairs for the Coalition Provisional Authority (CPA) for Iraq. By the very nature of his work, Applicant had access to highly sensitive information about U.S. and CPA plans, policies, and personalities. Also, he worked as an interpreter for other staff members in their interactions with the Iraqi population.

Applicant returned to the U.S. from Iraq on or about December 13, 2003. He took time off for the Christmas holiday, and then was contacted by his current employer. He was interviewed in February or early March, and started working on or about April 15, 2004, as a linguist and media analyst. In this position, Applicant works for a public diplomacy program that provides daily reports about the Arab media to high-level officials within the Defense Department. His career goal is to work in the counterterrorism field on behalf of the U.S.

E. Applicant's security-clearance applications

Since 1992, Applicant completed at least four security-clearance applications (Exhibits 1, A12, A13, and B). These documents show Applicant provided detailed information about his foreign background, foreign travel, employment history, educational background, and family members, except for the second application (Exhibit 1), which was submitted in September 1999 for his job with the language consulting company. The SOR alleges Applicant provided false answers to a question about a foreign passport and a question about foreign travel on Exhibit 1. Each security-clearance application is discussed below.

When Applicant obtained U.S. citizenship in December 1991, he was then serving on active duty in the Army. Thereafter, he was required to complete a security-clearance application (Exhibit B), wherein he revealed his foreign birth and his U.S. citizen via naturalization. In response to Question 10 about residences, he provided a detailed accounting of where he lived, including periods in both Lebanon and Spain. In response to Question 12 about family, he revealed that his mother and father were then living in Lebanon, and that his father was a Lebanese citizen and his mother was a U.S. citizen. In response to Question 14.c, he indicated that he had traveled outside of the U.S. and provided a detailed accounting of his foreign travel/connections. Based on this application, a single scope background investigation was undertaken and completed in September 1992 (Exhibit 2-DA Form 873). The Army granted Applicant a top-secret security clearance in October 1992.

Applicant completed another security-clearance application in September 1999. This document, Exhibit 1, lacks the detail contained in the other applications. Applicant explained it was completed in a rushed environment as the company wanted to deploy Applicant to Saudi Arabia within two weeks of hiring. Also, it was Applicant's first experience with the electronic application form, which he completed on a laptop computer. In response to Question 15, Applicant answered "no," thereby denying he had an active foreign passport in the last seven years. In response to Question 16, Applicant answered "no," thereby denying he had traveled outside of the U.S. on other than official U.S. Government orders in the last seven years. Both answers were incorrect. Applicant's explanation, in summary, is that his incorrect answers were the result of mistake and inadvertence due to the circumstances in which the application was completed. Applicant did not receive a copy of the application until it was provided to him in preparation for this case.

Well before the SOR was issued in this case, Applicant completed the third security-clearance application in November 2002 (Exhibit A12). This application was completed by hand. He revealed his foreign birth and that he obtained U.S. citizenship via naturalization. He supplied detailed information about where he had lived and his employment history. In response to Question 14 about family, he disclosed the place of birth, country of citizenship, and current address of his mother, father (now deceased), brother, sister, and uncle. In response to Question 17 about foreign activities, he disclosed he had an active foreign passport within the last seven years. He noted that he obtained a Lebanese passport in February 1998 and used it in March 1998 because he did not want an exit stamp from the Beirut airport on his U.S. passport. In response to Question 18 about foreign travel, he provided a detailed accounting of his foreign travel from February 1998 to October 2002, including several trips to Lebanon made while he was working in Saudi Arabia and the UAE.

Well before the SOR was issued in this case, Applicant completed the fourth security-clearance application in January 2003 (Exhibit A13). He again revealed his foreign birth and that he obtained U.S. citizenship via naturalization. He also supplied detailed information about where he had lived and his employment history. In response to Question 9, he disclosed the place of birth, country of citizenship, and current address of his mother, father (deceased), brother, sister, and uncle. In response to Question 15 about foreign activities, he disclosed he had an active foreign passport within the last seven years. He noted that he obtained a Lebanese passport in February 1998 and used it in March 1998 because he did not want an exit stamp of the Beirut airport on his U.S. passport. In response to Question 16 about foreign travel, he listed 12 trips dating from February 1998 to October 2002.

F. Applicant's foreign passport and citizenship

When Applicant initially entered the U.S., he did so as a citizen of Lebanon and had a Lebanese passport. He obtained his first U.S. passport after becoming a U.S. citizen in 1991. While on a trip to Germany in 1998 to visit his brother, Applicant learned his father was very ill and decided to make a trip to Lebanon to visit his father. In his possession were both his valid U.S. passport and his expired Lebanese passport. As a citizen of Lebanon, he was required to use his Lebanese passport to enter the country and the expired passport was sufficient for that purpose. Not wanting a Beirut airport exit stamp in his U.S. passport, Applicant decided to obtain a new Lebanese passport and used it to exit Lebanon. This was the only occasion Applicant used the Lebanese passport. After learning the foreign passport may raise a security concern, Applicant caused his Lebanese passport to be unusable. The destruction or invalidation of the passport took place in the presence of an Army military intelligence officer (Exhibit 2-Memorandum For Record, dated 15 January 2003).

Applicant is willing to renounce his Lebanese citizenship. By letter, dated September 9, 2005, Applicant advised the Lebanese Embassy in Washington, D.C., that he was renouncing his citizenship and asked the embassy to forward his request to the appropriate authorities in Lebanon for approval (Exhibit A15).

G. Applicant's character references

Applicant submitted a wealth of favorable character evidence. Exhibit A1 is a declaration of the gentlemen who served as a U.S. senior-level official in security affairs for the CPA for Iraq. This gentleman has professional experience in national security related positions since the late 1960s, and he is a longtime holder of a security clearance. He is of the opinion that Applicant proved himself a reliable and skilled interpreter. For example, in a thank-you letter to Applicant this gentleman had the following to say:

Your motivation, dedication, and willingness to work intensely for long hours under difficult and even dangerous conditions far from home has been an inspiration and a reminder of what patriotism and professional means. Your work here has served the security of the United States and the principles and values of our country, by contributing to the

opportunity for the people of Iraq to enjoy lasting freedom in a peaceful and prosperous country (Exhibit A6).

This gentleman has no doubts about Applicant's loyalty to the U.S., and he believes that Applicant is an extremely reliable and proficient linguist whose skills are urgently needed to assist in our country's ongoing counterterrorism efforts.

Exhibit A2 is the declaration from a gentleman who served with Applicant at the CPA for Iraq in 2003. This gentleman is a vice-president for a defense contractor and his professional experience includes 34 years of military service; he's held a security clearance since 1971. Describing Applicant as a complete professional, this gentleman was impressed with Applicant's honesty, work ethic, attention to detail, and willingness to take extra effort to get the job done. This gentleman views Applicant as an extremely reliable and proficient linguist whose skills are urgently needed in the ongoing war against terrorism.

Exhibit A3 is the declaration from a gentleman who served with Applicant at the CPA for Iraq in 2003, and he was also the commander of the MCC in Iraq in 1993 when Applicant was assigned there for a second rotation. This gentleman is now the vice president for policy operations and defense issues for a private think tank, and his 30 years of military service includes serving as a Special Forces officer and a Middle East foreign area officer. He has held a security clearance since he entered the military in 1970. This gentleman was so impressed with Applicant's duty performance at the MCC in Iraq that he asked to have Applicant hired and assigned as the principal translator for the U.S. senior-level official for the CPA for Iraq, and Applicant quickly became the sole translator whose competence and security could be depended upon to assist the senior-level official. This gentleman has been consistently impressed with Applicant's reliability and dedicated performance.

For example, upon his departure from the CPA, he penned a letter expressing his appreciation for Applicant's work by stating, in part, the following:

You excelled as a translator. I have never known one better. Your dedication to excellence and accuracy in your work and your commitment to your mission set the standard for every member of this organization. Quite simply, we would never have accomplished what we have done without your contribution (Exhibit A5).

He points out in his declaration that Applicant handled matters of the greatest sensitivity to national security, and did so with discretion and due regard for its significance. This gentleman views Applicant as an extremely reliable and proficient linguist whose skills are urgently needed in the ongoing war against terrorism.

Exhibit A4 is the declaration from a gentleman who served with Applicant in 1999 when Applicant worked as a translator for the OSI in Saudi Arabia. This gentleman's professional experience includes 24 years of active duty military service, and he has more than 23 years of experience in law enforcement, including 12 years with the OSI. He

has held a security clearance since 1977. This gentleman is of the opinion that Applicant's duty and job performance was nothing short of stellar. He notes that Applicant had access to classified information and handled it with utmost care, caution, and discretion. This gentleman opines that Applicant is a trustworthy and loyal American whom he relied upon to safeguard information as well as for his own safety and security.

This gentleman views Applicant as an extremely reliable and proficient linguist whose skills are urgently needed in the ongoing war against terrorism.

In addition to the four declarations, two character witnesses testified at the hearing. The first witness is a gentleman who spent 25 years as a businessman and entrepreneur working in satellite communications. He is now a presidentially-appointed official for one of the military departments. He worked with Applicant on a daily basis in 2003 for several months while assigned to the CPA for Iraq. He met Applicant on his first day in the Green Zone in Baghdad and worked closely with Applicant in an intense, demanding environment. This gentleman has a very high opinion of Applicant as an honest, solid person who is very pro-American, and as someone who wants to see the U.S. succeed in the Middle East. He has no reservations whatsoever about Applicant's suitability to hold a security clearance, and he would hire Applicant immediately if a suitable position was available.

The second witness is an active duty military officer who was the detachment commander of the OSI unit in Saudi Arabia. This gentleman has held a security clearance since he entered military service, and he is currently working in the counterterrorism field. He met Applicant in September 1999 and worked with Applicant on a daily basis. This gentleman is of the opinion that Applicant produced quality work as a linguist and translator. He views Applicant as loyal and honorable, and as a man with integrity. He had no reason to question or doubt Applicant's integrity and never had a concern about Applicant's handling of classified or sensitive information.

H. The country of Lebanon

As requested by agency counsel, I took administrative or official notice of certain matters concerning the country of Lebanon (Exhibits 3 - 9). In particular, I note the following:

- Lebanon experienced a 16-year civil war from 1975 to about 1991 (Exhibit 5).
- In its February 2005 Country Reports on Human Rights Practices, the State Department reported that the Lebanese government's overall human rights record remains poor, although there were improvements in some areas (Exhibit 8).
- In April 2005, the U.S. Department of State issued a travel warning to update information on threats to American citizens and interests in Lebanon (Exhibit 3). The warning expressed ongoing safety and security concerns for U.S. citizens, and noted that recent events in Lebanon underscored the need for caution and precautions.
- In its April 2005 Country Reports on Terrorism, the State Department reported that Lebanon remains host to numerous U.S.-designated terrorist groups (Exhibit 6).
- In its November 2004 Background Note on Lebanon, the State Department reports that the U.S. seeks to maintain its traditionally close ties with Lebanon, and to help preserve its independence, sovereignty, national

unity, and territorial integrity (Exhibit 5).

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.⁽⁴⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁶⁾ The government has the burden of proving controverted facts.⁽⁷⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.⁽⁸⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁹⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽¹⁰⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽¹¹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹²⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

SOR paragraph 1 alleges foreign preference under Guideline C.⁽¹⁴⁾ The allegation is based on Applicant's obtaining, possessing, and using a foreign passport after becoming a U.S. citizen. A security concern may exist when a person acts in such a way as to indicate a preference for a foreign country over the U.S. In particular, the exercise of dual citizenship raises a security concern because the active exercise of foreign citizenship may indicate a preference for that foreign country over the U.S. Absent the exercise of dual citizenship or indicia of some affirmative action demonstrating foreign preference, mere possession of foreign citizenship by virtue of birth does not fall within the scope of Guideline C.

Here, the government established its case under Guideline C. Applicant exercised dual citizenship by applying for, possessing, and using a Lebanese passport as a U.S. citizen. Although Applicant obtained and used the Lebanese passport under constrained circumstances, doing so raises a security concern under the guideline. Under these circumstances, both DC 1⁽¹⁵⁾ and DC 2⁽¹⁶⁾ apply against Applicant.

Turning to the mitigating conditions under Guideline C, MC 1⁽¹⁷⁾ applies because his dual citizenship is based on his parents' citizenship or birth in a foreign country.⁽¹⁸⁾ And MC 4⁽¹⁹⁾ applies because Applicant indicated he is willing to renounce his Lebanese citizenship and took action to do so. The overwhelming weight of the record evidence shows that Applicant's life is firmly rooted in the U.S. as opposed to Lebanon. That's evidenced by, among other things, his destruction or invalidation of his Lebanese passport, his family ties to the U.S., his educational and work history in the U.S., his military service on behalf of the U.S., and his employment as a defense contractor working in the Middle East on behalf of the U.S. Viewing the record evidence as a whole, Applicant has demonstrated his clear preference for the U.S. and successfully mitigated the foreign preference security concern. Accordingly, Guideline C is decided for Applicant.

SOR paragraph 2 alleges foreign influence under Guideline B. The allegation is based on his ties or connections to Lebanon. A security concern may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

Here, the government established its case under Guideline B. Applicant has immediate family members who are citizens or residents of Lebanon. His mother is a dual citizen of Lebanon and has in the past spent part of the year living there. His brother is a dual citizen of Lebanon, works for a Lebanese company, and now lives and works in the UAE. His sister is also a dual citizen of Lebanon, although she and her family are living in the U.S. Also, Applicant has ties of affection to his paternal uncle who is living and working in Lebanon. Over the years Applicant made many trips to

Lebanon to visit his family and take care of family business stemming from his father's death, which he is continuing to do by making the voluntary payments. Taken together, these circumstances raise a security concern within the meaning of DC 1. [\(20\)](#)

I reviewed the mitigating conditions under Guideline B and conclude that MC 5 [\(21\)](#) applies. Applicant receives credit under MC 5 because he has no financial interests in Lebanon. In reaching this conclusion, I considered Applicant's voluntary payments on his late father's estate and conclude that activity does not amount to a financial interest in a foreign country. The term "financial interest" contemplates an interest or activity in a foreign country that may generate or produce a financial gain, profit, or asset such as business, property, or investment interests as opposed to the case here where Applicant is making voluntary payments with no expectation of return or gain.

The remaining MC under the guideline do not apply based on the facts and circumstances here. The analysis does not necessarily end with the formal mitigating conditions, however, because other matters may mitigate the security concern. In making this analysis, I considered four matters under the whole-person concept.

First, although Applicant has family ties to Lebanon, the vast majority of his current family ties are to the U.S. Other than his brother who is now living and working in the UAE, Applicant's immediate family members are citizens and residents of the U.S. Likewise, many of his extended family members are U.S. citizen and residents, and he has no contact with extended family members in Lebanon. Although Applicant has a relationship with his uncle in Lebanon, his uncle is not connected with or employed by the Lebanese government or any other foreign power.

Second, Applicant's connections to the U.S. are strong. He has lived in the U.S. since the age of 17. Since his arrival here, Applicant can fairly be described as a model immigrant. He completed his formal education in the U.S., served in the U.S. Army, and has been working in different capacities to further the interests of the U.S. Indeed, three times (twice as a soldier and once as a contractor) Applicant was called to serve in Iraq and he answered the call on each occasion. And on each occasion, Applicant did not merely check-the-box by doing what was necessary to get by. Instead, he dedicated himself to the mission and excelled in his duty performance. In short, the record evidence is clear that Applicant's personal and professional interests are in the U.S. and that situation is unlikely to change.

Third, I have given Applicant's favorable security clearance history substantial weight. Applicant was granted a top-secret clearance by the Army in 1992, and he had access to classified information while twice assigned to the MCC in Iraq. He had access to classified or sensitive information or both while working as a contractor for the OSI in the Middle East. Also, Applicant had access to classified or sensitive information or both while working as a contractor for the CPA for Iraq. At all times Applicant proved himself reliable and trustworthy.

Fourth, I have given Applicant's favorable character references substantial weight. These are men with decades of experience working in national security positions or serving in the military or both. These are men who have held

security clearances and had access to classified information. These are men who just don't talk about national security--they live it. Consequently, they know the importance and significance of giving their opinions in support of Applicant. Based on their opinions, coupled with the record evidence as a whole, I conclude that Applicant has such deep and longstanding relationships, connections, and loyalties in the U.S. that he can be expected to resolve any potential conflict of interest in the favor of the U.S. interest.

To sum up, the record evidence demonstrates Applicant has all the indicators of a mature, responsible, and trustworthy individual. At this point in Applicant's life his connections to Lebanon are far less than they were in past, especially compared with when the Army granted Applicant a top-secret security clearance in 1992. Likewise, his connections to Lebanon are rather minimal or attenuated when compared with his strong connections to the U.S. After weighing the record evidence as a whole, I conclude Applicant successfully mitigated the foreign influence security concern raised by his ties to Lebanon. Accordingly, Guideline B is decided for Applicant.

SOR paragraph 3 alleges personal conduct under Guideline E. ⁽²²⁾ The allegation is based on Applicant's two incorrect answers in response to two questions on the September 1999 security-clearance application. Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. The deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. An omission of relevant and material information, for example, is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or thought the information did not need to be reported.

Here, the record evidence fails to establish by substantial evidence that Applicant knowingly and willfully provided false answers on his September 1999 security-clearance application. Although his answers to Questions 15 and 16 were incorrect, the evidence is insufficient to show he deliberately provided false information about his foreign passport and his foreign travel. It is highly implausible and illogical to conclude that a person with Applicant's obvious foreign background would deliberately seek to conceal these matters. It is even more implausible and illogical in light of the fact that he disclosed his foreign travel in security-clearance applications he completed in 1992, 2002, and 2003, and he disclosed his foreign passport in applications he completed in 2002 and 2003. The security-clearance application he completed for the Army in 1992 did not ask about a foreign passport. Applicant's disclosure of these matters in 1992, 2002, and 2003, rebuts the allegation that he was deliberately seeking to conceal this information in 1999. Given these circumstances, Applicant's explanation--that his incorrect answers were the product of mistake or inadvertence due to the circumstances in which the application was completed--is plausible and believable. Accordingly, no DC apply and Guideline E is decided for Applicant.

To conclude, Applicant has met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline C: For Applicant

Subparagraphs a - b: For Applicant

SOR ¶ 2-Guideline B: For Applicant

Subparagraphs a - e: For Applicant

SOR ¶ 3-Guideline E: For Applicant

Subparagraphs a - c: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive

5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Much of the information detailed in this section was gleaned from Exhibit A14.

3. Because the kidnaping incident was not alleged in the SOR, and the SOR was not amended to include it, I cannot decide this case against Applicant based on this incident. But I have considered this incident for the purpose of showing the conditions in Lebanon in 1976 during the beginning of the country's civil war. Because this incident took place nearly 30 years ago and the civil war ended in about 1991, I have not given it substantial weight.

4. Executive Order 10865, § 7.

5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

6. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.

7. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

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

9. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

13. *Egan*, 484 U.S. at 528, 531.

14. In August 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I), issued a policy memorandum--the so-called Money Memorandum, because it is signed by Assistant Secretary Arthur L. Money--clarifying the application of the foreign preference security guideline for cases involving possession and/or use of a foreign passport. During closing argument, agency counsel conceded Applicant had complied with the requirements of the Money Memorandum (Transcript at 185). Accordingly, based on the concession, this matter will not be addressed under Guideline C.

15. E2.A3.1.2.1. The exercise of dual citizenship.

16. E2.A3.1.2.2. Possession and/or use of a foreign passport.

17. E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

18. ISCR Case No. 99-0452 (March 21, 2000) at pp. 2-3 (Modifying its earlier rulings, the DOHA Appeal Board, in an expansive reading of MC 1, concluded the literal language of MC 1 allows it to be applied even when an applicant exercises foreign citizenship after becoming a U.S. citizen).

19. E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

20. E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

21. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

22. During closing argument, agency counsel conceded they did not have any evidence to support the falsification allegation in subparagraph 3.c (Transcript at 184-85). Accordingly, a favorable conclusion will be made on

