

DATE: March 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17946

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign contacts have been mitigated and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On October 2, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 22, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 8, 2004. A notice of hearing was issued on January 16, 2004, scheduling the hearing for February 9, 2004. At the hearing the Government presented four exhibits. The Applicant presented five exhibits and he testified on his own behalf. The record was left open for five days to receive additional documentation. The Applicant submitted one Post-Hearing Exhibit consisting of seven pages. The official transcript (Tr.) was received on arch 1, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 51 years of age, married and has a Masters Degree in Computer Science. He is employed as a Senior Software Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Tripoli, Lebanon. He moved to the United States at the age of twenty-five and obtained a masters degree. He married a United States citizen and has three children who are United States citizens. He also has a child from a previous marriage who is a United States citizen. The Applicant became a naturalized United States citizen in 1985. His net worth in the United States is approximately \$700,000.00.

The Applicant had a retirement savings account in Tripoli, Lebanon, worth approximately \$43,000.00 in United States dollars. He opened the account because the bank in Lebanon was offering a 6% interest rate, and he wanted to bolster his retirement account. Since this account is in issue, he closed the account on February 5, 2004, and the money has been transferred to a bank in the United States. (*See*, Applicant's Exhibit B and Applicant's Post-Hearing Exhibit).

The Applicant presently owns vacation property in Lebanon valued at approximately \$53,000.00 in United States dollars. He had always planned to spend some of his retirement time in Lebanon. Since the property is in issue, he has placed it on the market, and is in the process of selling it. (*See*, Applicant's Exhibit A). He no longer intends to retire in Lebanon. (Tr. p. 43).

The Applicant has six brothers and one sister. Five of his siblings are United States citizens, four of whom are living in the United States. The other sibling has moved back to Lebanon, is semi-retired, fixes home appliances and owns a store. Two of his brothers are Lebanese citizens, one of whom lives in Saudi Arabia, is severely disabled, and is planning on moving back to Lebanon. The other brother runs a small automotive shop and lives in Lebanon. None of his siblings are employed for or associated with the Lebanese or Saudi Arabian government. To his knowledge, none of his family are involved in terrorist groups. (Tr. p. 46). The Applicant contacts his siblings in Saudi Arabia and Lebanon about two or three times a year by telephone and electronic mail, mainly on holidays.

Concerning his allegiance to the United States the Applicant stated,

I just want to say I have my own family. I always mind my own business and I do whatever it takes to raise my family as Americans. I came here and I have the American Dream. And all my dreams came true. So, I love this country and I treasure my citizenship. But all this information that I gathered about my sister and brothers and relatives takes tremendous time and effort me to do that. And I am not really involved with them that much because there are so many things I don't know about them. I just want to point that out. They are all financially set. They don't owe me anything. I don't own them anything. Most of the time, we don't even mention work. We all talk about family, if we ever talk. (Tr. p. 47).

Four letters of recommendation from the Applicant's direct supervisor, coworkers, and friends indicate that the Applicant demonstrates excellent technical skills in his field, is responsible, professional, and a person of high morals and impeccable integrity. (*See*, Applicant's Post-Hearing Exhibit).

A Performance appraisal of the Applicant from January 2001 through January 2002 indicates that the Applicant's work "exceeds expectations." (*See*, Applicant's Exhibit C).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

A security risk 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: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between the loyalty of the person(s) involved and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The

Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts do not have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant is not vulnerable to foreign influence. The Applicant, his wife, and his four children are all United States citizens. He owns a home, several cars, furniture, and a retirement account in the United States worth approximately \$700,000.00. The Applicant has permanently closed his bank account in Lebanon, is in the process of selling his vacation property there, and he clearly understands that this property must be sold. Accordingly, Mitigating Factor 5 applies. He no longer intends on retiring in Lebanon. He maintains only casual and infrequent contact with his two siblings in Lebanon. None of his extended family in Lebanon are associated with the Lebanese government, nor are they involved in any terrorist activities. Mitigating Factors 1 and 3 also apply. His five other siblings are United States citizens residing in the United States. Under the particular circumstances of this case, the Applicant has done everything he possibly could do to show his allegiance to the United States. The Applicant has met his burden of demonstrating that he is in not in a position to be exploited by Lebanon or any other government in a way that could force the Applicant to choose between loyalty to his family in Lebanon and loyalty to the United States. Based on the foregoing, Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge