

DATE: March 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01578

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship has been mitigated. His foreign ties, including his family and financial interests in Lebanon have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On October 1, 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 17, 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 seven exhibits. The Applicant presented four exhibits and he testified on his own behalf. The record was left open for ten days to provide the Applicant an opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit consisting of three pages. The official transcript (Tr.) was received on March 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 49 years of age, married and holds a Bachelors of Science Degree in Computer Science. He is employed as a Head Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Lebanon and the United States. He was born and raised in Faidon, Lebanon. He moved to the United States to pursue his college education in 1977. In June 1985, he became a United States citizen. The Applicant renewed his Lebanese passport after becoming a United States citizen in March 1999. He renewed it for convenience purposes, in order to enter and exit Lebanon more expediently. His Lebanese passport expires in March 2004. He testified that he has no plans to renew it. The Applicant states that he is willing to renounce his Lebanese citizenship. (Tr. p.47).

The Applicant submitted documentation from the Lebanese Consulate General in the United States indicating that on February 12, 2004, he surrendered his Lebanese passport and that he paid the required fees to do so. (*See*, Applicant's Post-Hearing Exhibit).

Paragraph 2 (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 has a brother and a sister who reside in and are citizens of Lebanon. His brother owns a small electric shop and his sister is a housewife. The Applicant's parents-in-law also reside in and are citizens of Lebanon. His father in law is a retired bank manager. His mother-in-law is a housewife. None of his relatives in Lebanon have any association with the Lebanese government. The Applicant contacts his sister in Lebanon about three times a year. He is in contact with his brother in Lebanon on a monthly basis. (Tr. p. 31). The Applicant's wife is also close to her parents in Lebanon. (Tr. pp 32-33).

The Applicant owned two apartments in Lebanon that he sold for \$120,000 at the end of 2002. (Tr. pp. 38, -39 and Applicant's Exhibit B). As part of the sales agreement the Applicant receives \$1,250.00 a month, that he will receive for a four year period. (Tr. pp. 37-38). The Applicant also holds the title to the property. (Tr. p. 40). The money from the sale is placed into a Lebanese bank account that he holds jointly with his brother in Lebanon. Whenever the Applicant needs money he can access the account, or contact his brother in Lebanon who will send him money. Presently, the Applicant has approximately \$12,000.00 or \$13,000.00 in his bank account in Lebanon. (Tr. pp. 38-39).

The Applicant testified that he has suffered financial losses in the United States due to bad investments. By his own figures, the Applicant has approximately \$150,00.00 in equity in his home, \$11,000 in stock, and two cars valued at \$40,00.00 in the United States. (Tr. p. 44).

His wife is also a dual citizen of Lebanon and the United States. They have three children who were born in the United States.

Mitigation.

Letters of recommendation from the Applicant's manager and coworkers collectively indicate that the Applicant is considered fair, honest, reliable and trustworthy. He is said to "practice the highest ethical standards". He is said to be a man who has demonstrated "impeccable professionalism and dedication on and off the job". He is "dedicated to his family, the American way of life and his faith in God". He is a man of "outstanding integrity." (*See*, Applicant's Exhibit A).

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 Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Condition that could raise a security concern:

1. The exercise of dual citizenship;

Condition that could mitigate security concerns:

4. Individual has expressed a willingness to renounce dual citizenship.

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 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;
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:

None.

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 C (foreign preference) and 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 demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate 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 preferences have a direct and negative impact on his suitability for access to classified information.

The Applicant is a dual citizen of Lebanon and the United States. He was born in Lebanon, moved to the United States in 1977, and became a United States citizen in 1985. After becoming a United States citizen, he obtained a Lebanese passport for convenience purposes. Since learning that dual citizenship is an adverse factor when holding a security clearance, the Applicant unconditionally renounced his Lebanese citizenship and surrendered his passport, in accordance with the Money Memorandum. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the Applicant has a brother, a sister, and parents-in-laws in Lebanon. He and his wife maintain regular contact with them. Although the Applicant has sold his foreign property, he still receives monthly payments to his bank account in Lebanon. The Applicant is going to receive \$45,000.00 over the next three years. Given his financial losses in the United States and the value of his assets, his money in Lebanon is a substantial interest that he cannot mitigate. Thus, he has foreign ties and financial interests that could potentially create the potential for foreign influence that could result in his compromise of classified information. Consequently, the Applicant has not clearly demonstrated an unequivocal preference for the United States. None of the mitigating factors apply. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not 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.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

Paragraph 2 : Against the Applicant.

Subparas. 2.a.: Against the Applicant.

2.b.: Against the Applicant

2.c.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge