

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Lebanon, but is now a naturalized United States citizen. His parents and twin brother are citizens of and reside in Lebanon. His parents also are U.S. permanent resident aliens, having lived here for most of 2001. Applicant's contact with his overseas relatives is limited to monthly telephone calls as he has not been back to Lebanon in over ten years. Applicant's twin brother is a Lebanese Army officer and his father is a retired chief of the Lebanese police department. Applicant's parents plan to stay in Lebanon despite their resident alien status. Applicant has failed to mitigate resulting security concerns under Guideline B (Foreign Influence). Clearance is denied.

CASENO: 03-11074.h1

DATE: 09/28/2004

DATE: September 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11074

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born in Lebanon, but is now a naturalized United States citizen. His parents and twin brother are citizens of and reside in Lebanon. His parents also are U.S. permanent resident aliens, having lived here for most of 2001. Applicant's contact with his overseas relatives is limited to monthly telephone calls as he has not been back to Lebanon in over ten years. Applicant's twin brother is a Lebanese Army officer and his father is a retired chief of the Lebanese police department. Applicant's parents plan to stay in Lebanon despite their resident alien status. Applicant has failed to mitigate resulting security concerns under Guideline B (Foreign Influence). Clearance is denied.

### **STATEMENT OF THE CASE**

On May 6, 2004, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (Foreign Influence). The SOR informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. <sup>(1)</sup>

On May 26, 2004, Applicant answered the SOR (Answer), wherein he admitted all but one <sup>(2)</sup> of the allegations and chose to have his case decided without a hearing. On June 29, 2004, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which Applicant received on July 19, 2004. Applicant timely filed a response to the FORM and the case was assigned to me on August 24, 2004.

### **FINDINGS OF FACT**

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 37 years old. He requires a security clearance in connection with his employment with a defense contractor where he has worked since April 1996. Applicant has held an interim clearance since December 2001.

Applicant was born in Lebanon in November 1966. He has a twin brother and one older brother. His twin still lives in Lebanon and is an officer in the Lebanese army. His father retired in 1996 after working in the Lebanese police department for 36 years and rising to the rank of police chief. Applicant and his family are Lebanese Christians and his mother is a retired evangelical school teacher. Applicant's older brother is a physician living in the United States as a permanent resident alien and is being sponsored for citizenship through his employers here. [\(3\)](#)

In or about 1999, Applicant applied for permission for his older brother to come to the United States. He lived in Lebanon for two years after completing his medical education in the U.S., but returned in 1999 to practice medicine here permanently. [\(4\)](#)

Applicant's parents came to live with Applicant in 2001 and stayed for about eight months. It must be assumed that they obtained their permanent resident alien status during this time. Nonetheless, they have chosen to live in Lebanon because Applicant's father's retirement benefits and pension allow them to live better there than they could in the United States. They return to the U.S. for visits every year to two years. Applicant's twin brother intends to serve 15 years in the Lebanese army to obtain his pension, then emigrate to the U.S. with Applicant's help. His twin brother has been to the U.S. only once, when he came here in connection with his military duties in the late 1990s. [\(5\)](#)

Applicant came to the U.S. as an engineering student in 1988. He received his BS in engineering in December 1990 and has been continuously employed here since at least 1992. Applicant and his wife, also from Lebanon and a naturalized U.S. citizen, married in April 1991 and have two children born in the United States. Her parents became U.S. citizens in 2002, and her brother is a Lebanese citizen residing in the U.S. as a permanent resident alien. Applicant and his wife still live in the house they bought in 1993. [\(6\)](#)

Lebanon is still recovering from the effects of a long civil war it experienced through the late 1980s. While it is ostensibly an independent state, Syria, a known sponsor of international terrorism, still has about 15,000 troops in Lebanon and wields considerable influence in Lebanese affairs. Continued instability in parts of Lebanon has enabled [\(7\)](#)

several terrorist groups to operate from Lebanon against Israeli and American interests in the region.

Applicant asserts that his family know only that he is an engineer working in the U.S. and are unaware of the nature of his work or his access to classified information. He further claims he could not be pressured to act contrary to U.S. interests as a result of his foreign ties of affection. <sup>(8)</sup>

## **POLICIES**

The Directive sets forth adjudicative guidelines<sup>(9)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair, impartial, and commonsense consideration of all of available relevant and material information, and application of the pertinent factors and criteria provided in Enclosure 2 of the Directive. Further, the Administrative Judge must consider as appropriate the "whole person" factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed in the Directive under Guideline B (Foreign Influence).

## **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(10)</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. <sup>(11)</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's

suitability for access in favor of the government. [\(12\)](#)

## CONCLUSIONS

Under Guideline B, 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 not citizens of the United States or 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. [\(13\)](#) The government has provided sufficient information in the FORM to support these allegations and establish a *prima facie* case for disqualification under Guideline B. Specifically, Applicant has close ties of affection with his parents and brother (SOR 1.a, 1.e) who are citizens of and reside in Lebanon. However, Applicant's father-in-law is now a U.S. citizen residing here and his brother-in-law is a permanent resident alien residing here (SOR 1.h). Nevertheless, Guideline B disqualifying condition (DC) 1 [\(14\)](#) applies to the brother-in-law as a foreign citizen. Further, Applicant's brother and, to a lesser extent owing to his retired status, his father have connections through their careers to the Lebanese government. (SOR 1.b and 1.e). DC 3 [\(15\)](#) still applies here

Applicant has not been to Lebanon in over ten years, but he still maintains regular contact by phone with his parents, and less frequent contact with his twin. (SOR 1.d and 1.f). Applicant also assisted in his older brother's immigration to the U.S. in 1999. (SOR 1.g) Further, Applicant's parents are U.S. permanent resident aliens, yet they have not resided here since 2001 (SOR 1.c) and they intend to remain in Lebanon where their standard of living is higher than it would be in the U.S. on Applicant's father's retirement. These facts [\(16\)](#) taken together show Applicant's ties of affection and obligation in Lebanon are unlikely to change in the near term.

His family ties in Lebanon may be benign as Applicant has argued in response to the FORM and SOR, but Applicant bears the burden of providing information through which these facts and related security concerns may be mitigated. His burden is especially onerous in light of his father's and brother's connections to the Lebanese government. Applicant has not shown they are not subject to pressure or coercion by a foreign government. Therefore, while Guideline B mitigating condition (MC) 1 [\(17\)](#) may apply to Applicant's brother-in-law insofar as he lives in the United States and is not likely vulnerable to coercion by a foreign government, it does not apply to Applicant's parents and twin still in Lebanon.

Nor does MC 3, [\(18\)](#) the only other available mitigating condition, apply here. Applicant's foreign contacts are close in that they are members of his immediate family. According to the conjunctive language of MC 3, even were his contact with his parents and brother infrequent, MC 3 would not apply.

On balance, in light of the unstable nature of the Lebanese government and the active presence of anti-American terrorist organizations, Applicant's ties to relatives who reside in a foreign country and who are closely identified with that country's government present an unacceptable risk that Applicant might be influenced by pressure against his relatives. Absent a showing that Applicant's father and brother are not susceptible to pressures from such organizations in an effort to compromise Applicant's duty to protect classified information, Applicant has not mitigated the security concerns in this regard. I conclude Guideline B against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3. A fair and commonsense assessment<sup>(19)</sup> of Applicant's foreign ties of affection raises reasonable doubts about Applicant's ability to protect United States government interests in the face of foreign influences. Absent substantial information to resolve the doubts about his foreign ties of affection, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: For the Applicant

## DECISION

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

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant denied, in part, SOR 1.h, because he claims his father-in-law is now a U.S. citizen.
3. FORM, Items 3, 4, and 5.
4. FORM, Items 3 and 4.
5. FORM, Item 5.
6. FORM, Item 5.
7. FORM, Items 5, 7, and 8.
8. FORM, Item 5.
9. Directive, Enclosure 2.
10. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. *See Egan*, 484 U.S. at 528, 531.
12. *See Egan*; Directive E2.2.2.
13. Directive, E2.A2.1.1.
14. Directive, 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;
15. Directive, E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;
16. The allegations in SOR 1.c, 1.d, 1.f, and 1.g do not present any disqualifying issues per se; they merely plead evidence normally presented in support of substantive pleadings. Nevertheless, I consider these facts to be probative of Applicant's suitability for access under Guideline B.

17. Directive, E2.A2.1.3.1. 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 loyalty to the person(s) involved and the United States;

18. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual *and* infrequent; (emphasis added)

19. Directive, E2.2.3.