

DATE: November 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11293

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Tim Moore, Esq.

SYNOPSIS

Applicant is an engineer for a defense contractor. His 83-year-old widowed mother, brother, and wife's family members live in Beirut, Lebanon. Applicant is a naturalized U.S. citizen, and has been in the U.S. since 1981 when he arrived here to enter college. He has one child born in the U.S. Applicant and his wife have close personal ties to his and her family members in Lebanon. He has not mitigated the foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

On May 6, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under the personnel security Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed statement, sworn to May 20, 2004, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me September 15, 2004.

A Notice of Hearing was issued on September 27, 2004, setting the hearing October 6, 2004. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented three exhibits which were admitted into evidence. Applicant appeared and testified, and did not offer any exhibits. I received the transcript (Tr.) of the hearing on October 18, 2004.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 44 years old. He works as an electrical engineer for a defense contractor. After he arrived in the U.S. in 1981 to enter college, he successfully completed his bachelors and masters degrees in electrical engineering. He is married with one child, who was born in the U.S. His wife is pregnant with their second child. Applicant and his wife are naturalized U.S. citizens, and have U.S. passports. Applicant was naturalized in 1988. They do not have Lebanese passports. Applicant disclosed fully all his family members living in Lebanon on his security clearance application (SCA). (Tr. 13 to 19, 22; Exhibit 1)

Applicant's 83-year-old mother is ill and living in Beirut, Lebanon. Applicant's brother is a civil lawyer in private practice in Lebanon. Applicant's brother lives with his mother, and Applicant calls them every Sunday at noon (8 p.m. Lebanon time) to talk to them and inquire about his mother's health. Applicant's last two visits to Lebanon were in the summer of 2002 and at Christmas 2003. Previously, he visited them in April 1996, December 1997, July 1998, and December 2000. Applicant has no business or financial interests in Lebanon. Applicant's only income is his salary from his employer. (Tr. 16 to 27)

Applicant's wife is Lebanese in origin. Her parents, brother, and sister live in Beirut, Lebanon. Applicant's wife calls her parents twice a week. Her father was a clerk in the municipal government, and is retired. He is 69 years old. Her mother suffers from Alzheimer's Disease. (Tr. 20 to 27)

Lebanon is a parliamentary democracy in which Syria has political influence. The government is also balanced constitutionally among three major religious groups. Applicant and his family members belong to the Christian minority in Lebanon. This influence includes thousands of Syrian troops being stationed in Lebanon. Lebanon suffered a civil war from 1975 to 1991. The political parties are organized along sectarian lines, as are the top three governmental offices under the Lebanese Constitution and the 1989 Ta'if Agreement that started the end of the civil war. The U.S. State Department issued a travel warning to U.S. citizens based on safety and security reasons. (Tr. 22, 23; Exhibits 2 and 3)

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. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every

case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE B: Foreign Influence

The Concern: 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. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

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. Directive, ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

A determination that the immediate family member(s) (e.g., spouse, mother, daughter, brother, or sisters) 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. Directive, ¶ E2.A2.1.3.1.

CONCLUSIONS

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 each allegation set forth in the SOR:

Guideline B - Foreign Influence: Disqualifying Conditions (DC) 1 (An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen or, or resident or present in, a foreign country) applies here. The Government presented sufficient evidence to establish its allegations. Applicant's mother, brother, parents-in-law, sister-in-law, and brother-in-law live and work in Lebanon. Applicant calls his family members weekly, and his

wife calls her parents twice weekly. Applicant traveled to Lebanon six times since 1996, averaging about every 18 months. Lebanon is a parliamentary democracy dominated politically by its neighbor, Syria, during and after the Lebanon's civil war.

Mitigating Condition (MC) 1 (the immediate family members are not agents of a foreign power or in a position to be exploited) is not applicable here. This MC is bifurcated and can only be applied if there is record evidence that establishes both prongs of the MC⁽¹⁾. There is also a rebuttable presumption that an Applicant has ties of affection for, or obligation to, his spouse's immediate family members and his own family⁽²⁾. Lastly, the DOHA Appeal Board has also held that security concerns under Guideline B are not mitigated merely because an Applicant's immediate family members are elderly or retired⁽³⁾.

In this case, Applicant's mother is 83-years old, his parents-in-laws are elderly and retired, Applicant and his wife have weekly contact with their families in Lebanon, and have traveled frequently to Lebanon for family visits. Applicant's evidence has not overcome the presumption of his close ties with his family members, if anything they show the ties are very close. Applicant has not shown, other than by mere assertion, that his family members in Lebanon are not subject to coercion or exploitation of a type to place him in the position in the future of having to choose between them and loyalty to the U.S. Applicant's father-in-law worked for the local municipal government and is now retired, drawing a pension. His family are Christians in a country with a Muslim Arab majority, and that suffered a civil war along sectarian grounds for 16 years. While Applicant testified his focus now was in America, and whatever might occur in Lebanon regarding his family members would not sway him from his duty to the U.S., where he has made his home for 23 years, owns a home, and where his son was born, those assertions are not persuasive enough to overcome the presumption of affection and the history of Applicant's frequent trips and phone calls to Lebanon. I considered the applicability of other MC and find none. Therefore, considering all of the factors and the totality of the evidence, I find against Applicant on this Guideline.

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.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. *See* ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004)

2. *See* ISCR Case No. 02-16657 (App. Bd. Sep. 23, 2004)

3. *See* ISCR Case No. 03-05645 (App. Bd. Sep. 15, 2004)

