

KEYWORD: Foreign Influence

DIGEST: The Lebanese citizenship, residence, and/or connection to the Lebanese government may pose an unacceptable security risk that can only be mitigated with substantial evidence demonstrating these family members do not constitute an unacceptable risk, particularly given the instability of the Lebanese government. Clearance is denied.

CASENO: 03-14354.h1

DATE: 09/23/2005

DATE: September 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14354

DECISION OF ADMINISTRATIVE JUDGE

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Gary L. Rigney, Esq.

SYNOPSIS

Although none of his family members appear to be agents of a foreign power, insufficient evidence has been adduced to conclude that his siblings-in-law are acceptable security risks. The same conclusion must be made regarding Applicant's brother, the military officer, as coercive or non-coercive pressure could easily be placed on and through him to Applicant. Clearance is denied.

STATEMENT OF CASE

On May 6, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the Applicant which detailed 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, continued, denied or revoked. On May 18, 2004, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on January 3, 2005. On January 12, 2005, this case was set for hearing on January 26, 2005. The Government submitted three exhibits and requested official notice be taken of six exhibits. Applicant submitted one exhibit. Testimony was taken from Applicant and five witnesses. The transcript (Tr.) was received on February 13, 2005.

I have taken official notice of six documents identified as Government Exhibits (GE) 4 through 9.

FINDINGS OF FACT

Applicant admitted all foreign influence allegations of the SOR. (1) Applicant, a 50-year-old lead engineer, has been employed by a defense contractor since July 1989. He seeks a secret clearance.

Applicant was born in Lebanon in November 1954. He left his homeland in 1976 to avoid the civil war and to pursue his education. He began his college education on a soccer scholarship in 1976 and received a bachelor's degree in Mechanical Engineering in 1982. In 2001, Applicant began his course work for a graduate degree in System Architecture and Engineering, and anticipated that his course work would be completed by the end of 2004. The record is silent on whether he completed this degree.

Applicant began his professional career in 1982 as an environmental engineer for a local city in the area. (Tr. 33-34.) After becoming a United States (U.S.) citizen in November 1987, Applicant moved to his current address in March 1988. He began working for his present employer in July 1989 in their space program. Since 2001, he has been working for the ground defense program. He applied for a security clearance in August 2001.

Since he emigrated to the U.S. in 1976, Applicant has been heavily involved in soccer programs at all levels, either as an organizer, coach or a referee. (Tr. 34-39.)

Applicant's parents and four siblings (subparagraph 1.a.) (2) are resident citizens of Lebanon. Applicant has contact with them about five or six times as year. Applicant's mother, 75 years old, was born in Syria in 1930 and is citizen of Lebanon. She has been a housewife all her life. (Tr. 69.) Applicant's father, 85 years old, once owned and operated a heavy equipment company, and sold this equipment to farmers. In the last 15 years, Applicant's father has spent his retirement operating an auto parts store. (Tr. 32; 61.)

In addition to his mother and father, Applicant has three brothers and one sister (1.a.) that are resident citizens of Lebanon. One brother, 44 years old, currently a major (1.b.) in the Lebanese Air Force, has traveled to the U.S. at least seven times between 1986 and 2001 for continued flight training. (AE A; Tr. 43.) When Applicant contacts his mother or father at their home, and if the major is also visiting them, then Applicant may speak with the major about four times a year. (Tr. 46.)

Applicant's sister has been a housewife all her life. Two other brothers (ages not disclosed in record), are resident citizens of Lebanon, and own an electronics store. (Tr. 43.) Applicant was never close to his siblings in Lebanon as they were much younger when he left the country in 1975. Applicant called his sister twice in the last four years (Tr. 71), and has never initiated telephone contact with the two brothers. (Tr. 72.)

Applicant has two brothers (both naturalized U.S. citizens) who live in the local area within five miles of Applicant. One brother is 48 years old, married with two children, is a community planner. The other brother is 52 years old, an engineer, and married with four children.

Applicant had one additional younger brother, a resident citizen of Lebanon, who was trained in the U.S. as a tank commander. This brother was killed in October 1983 defending U.S. troops at the military barracks in Lebanon.

Subparagraph 1.c. of the SOR lists the parents of Applicant's wife and her four siblings-in-law who are citizens of and currently residing in Lebanon. GE 2 (Applicant's interrogatory answers) identifies four siblings-in-law that are resident citizens of Lebanon. Three other siblings-in-law are citizens of Lebanon living in Germany.

Born in Syria, Applicant's father-in-law (1.c.) is 75 years old and a resident citizen of Lebanon; he still operates a shoe store with Applicant's 44-year-old brother-in-law and 38-year-old brother-in-law. Applicant's mother-in-law (1.c.) was born in Lebanon and is 68 years old; she is currently a resident citizen of Lebanon. She has been a housewife all her life. (Tr. 85.) If Applicant is home when his wife is talking to her parents, then he may talk to the parents-in-law; she usually speaks with her parents about once a month. (Tr. 61.) Otherwise, Applicant speaks with them about once a year.

The siblings (1.c.) of Applicant's wife, (3) ranging in age from 24 to 45 years old, were born in Lebanon. All siblings of his wife are resident citizens of Lebanon. The oldest sibling or brother-in-law (1.d.) is a resident citizen (4) of Lebanon, presently living in the U.A.E. Applicant spoke with him once in 2004 but has never met him. The next oldest sibling is 44 years old. Applicant has contact with him between one and three times a year. In addition to having met his 42-year-old sibling (brother-in-law), Applicant has contact with him about once or twice a year. Five of the eight siblings reside in the same house with Applicant's parents-in-law. (Tr. 84.) Neither his siblings nor his in-laws belong to any foreign political organizations. (Tr. 85.) No additional evidence was furnished regarding the past or present employment status of each sibling, or level of contact Applicant has with each sibling.

Applicant traveled to Lebanon in 1994, 1998, and 2001. (1.e.) Applicant has no plans to return to Lebanon except for an emergency such as his father dying. (Tr. 85-86.) Applicant had no reporting requirements for his last three trips to Lebanon because he has never had a security clearance. (5)

Applicant owns his home and thinks it is worth about \$260,000.00. Applicant has bank accounts and a retirement plan that contain approximately \$118,000.00. Applicant has been buying savings bonds for his five children for the past ten years, and believes the accumulated value is about \$20,000.00. (Tr. 89.) Applicant has no financial interests, no property, and no foreign obligations anywhere, including Lebanon. (Tr. 67.)

As he explained in GE 2, Applicant will take the necessary steps in notifying his facility security officer or the Federal Bureau of Investigation (FBI) if someone tried to influence or pressure him. (Tr. 67.)

Applicant and his wife (she became a U.S. citizen in 2000) are raising five children of elementary-school-age. (Tr. 39.) They participate in their children's education through the parent-teacher's association. (Tr. 90) While not involved in politics, Applicant voted in the last two federal and local elections. (Tr. 90-91.)

Applicant presented character evidence from five character witnesses. A former coworker, who had worked with Applicant for ten years, commented favorably on Applicant's job performance. An assistant district attorney testified he has known Applicant for approximately 11 years. In that time, he has refereed many soccer games with Applicant inside and outside the city. When traveling to the various soccer locations, they talk about various social activities of their children. The deputy director for security at the military installation where Applicant's employer is located has known Applicant for five years in soccer-related activities, and considers Applicant a good referee.

The acting branch chief has known Applicant since 1997. In their political discussions, the chief could not recall Applicant ever expressing discontent over a U.S. position. Applicant's coworker and supervisor since 1992 has participated in Applicant's performance evaluations and has found Applicant to be a consistent performer, who has always demonstrated compliance with supervision. (Tr. 78.)

POLICIES

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the factors of the whole person concept, however, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses.

Foreign Influence (FC)

When an individual's immediate family, including cohabitants, and other persons to whom he or she is bound by affection and influence are not citizens of the United States or may be subject to duress, the potential for foreign influence could result in the compromise of classified information.

Burden of Proof

The government has the burden of proving controverted facts by substantial evidence. After the government meets its burden, an applicant has the ultimate burden of presenting evidence in refutation, extenuation, or mitigation that demonstrates it is clearly consistent with the national interest to grant or continue a security clearance. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of the Navy v. Egan*, 484 U.S. 518, at 531.

CONCLUSIONS

The Government has established a case of foreign influence (FI) as Applicant's parents and four siblings, and his wife's parents and her four siblings are citizens of Lebanon currently residing in Lebanon. FI disqualifying condition (DC) E2.A2.1.2.1. (*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*) applies. Additionally, because Applicant's brother is a resident citizen of Lebanon and is an officer in the country's Air Force, FI DC E2.1.2.3. (*relatives, cohabitants, or associates who are connected with the government*) applies. The Lebanese citizenship, residency, and/or connection to the Lebanese government may pose an unacceptable security risk that can only be mitigated with substantial evidence demonstrating these family members do not constitute an unacceptable risk, particularly given the instability of the Lebanese government. Lebanon is a republic with political power resting in the President, Prime Minister and Speaker of Parliament. The country has enjoyed relative calm since the civil war ended in 1991. While the government does not sponsor terrorism, terrorist groups still exist in the country. Fortunately, the Syrian influence in the internal affairs of Lebanon has dramatically decreased in the last year with the withdrawal of almost all Syrian troops.

The security concerns of foreign family members may be mitigated where it can be determined the individual(s) is not an agent of a foreign power or in a position where pressure can be placed on them, and through them to Applicant. FI mitigating condition (MC) 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 U.S.) Concerning his parents (subparagraph 1.a), because they are not agents of a foreign country, and are not in a position to be exploited, FI MC E2.A2.1.3.1. applies as I find they pose a minimal security risk that is entirely manageable. His mother, 75 years old, has been a housewife all her life. Applicant's father, 85 years old, has spent the last 15 years operating an auto parts store following a career of manufacturing heavy equipment for farmers. Even though the record does not reveal the ages of Applicant's two brothers and one sister, I do not find they constitute an unacceptable security risk either, because the sister is a housewife and the two brothers operate an electronics store. However, because Applicant's 44-year-old brother is a citizen of Lebanon currently residing in Lebanon, I must find against Applicant under subparagraph 1.a.

Applicant's mother-in-law is 68 years old and has been a housewife all her life. Applicant's father-in-law, who is 75 years old, operates a shoe store with Applicant's two brothers-in-law. I conclude FI MC E2.A2.1.3.1. applies with respect to his parents-in-law because they are not agents of a foreign power nor do they appear to be in a position to be exploited. On the other hand, little or no evidence was introduced by Applicant that provides the status of his of his four siblings-in-law regarding their current or past employment and the frequency of their contacts with Applicant. Subparagraph 1.c. is found against Applicant.

The same adverse finding must be made regarding subparagraphs 1.b. and 1.d. The record shows the 44-year-old brother is connected to the government of Lebanon through his rank as major in the country's Air Force. Though there is no information indicating the brother is an agent of a foreign power, his military position increases his chances of being exploited by a foreign power and creating an unacceptable security risk that could pressure Applicant to choose between loyalty to his brother and the U.S. Regarding his oldest brother in the U.A.B. (subparagraph 1.d.), Applicant has not met his burden of demonstrating this family member does not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002).

Applicant has maintained that if he or a family member were pressured or coerced, he would contact the security officer or law enforcement. These statements must be weighed and balanced with the fact that Applicant has never had a security clearance before, and desires to be perceived in the best light in order to increase his chances of obtaining a security clearance. In addition, statements of what Applicant would do in the future if an attempt was made to influence him, according to the DOHA Appeal Board, are entitled to little weight unless an applicant has acted in a similar fashion in the past under the same circumstances. ISCR Case No. 99-0501 (December 19, 2000).

Applicant's three trips to Lebanon in 1994, 1998 and 2001 do not raise security issues. The travel occurred before Applicant's application for security clearance. There is no evidence to infer or suggest the trip was taken for some inappropriate purpose. I find in Applicant's favor under subparagraph 1.e.

Applicant's favorable job performance evidence, together with his outstanding achievements in developing soccer programs in the area since 1982 have been carefully considered. However, the character evidence is insufficient to overcome the foreign influence concerns identified in subparagraphs 1.a., 1.b., 1.c., and 1.d. In reaching this decision under the FI guideline, I have considered the general factors of the whole person concept.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

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

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. For the Applicant.

Paragraph 2 (Personal Conduct, Guideline E): FOR THE APPLICANT.

- a. 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 Applicant.

Paul J. Mason

Administrative Judge

1. In opening statement, the government indicated they had no proof to support the personal conduct allegation. Paragraph 2 is found in Applicant's favor.
2. Subparagraph 1.a. alleges five siblings (four brothers and one sister). As shall be discussed below, one of the brothers died in 1983. (Tr. 66.)
3. Page 1 of the GE 2 lists 8 siblings of Applicant's spouse in chronological order by age.
4. Page 1 of GE 2 lists the siblings in chronological order by birth date. The second (44 years old), fourth (37 years old), sixth (30 years old), seventh (27 years old), and eighth siblings (24 years old) live with Applicant's father-in-law.
5. He did report the trips to his project manager. (Tr. 87.)