

KEYWORD: Foreign Influence

DIGEST: Applicant was born and raised in Lebanon, but immigrated to the U.S. in 1989 and was naturalized as a U.S. citizen in 1996. Available information is sufficient to mitigate the foreign preference (Guideline B) security concerns due to his wife's family who are Lebanese citizens living in the U.S., and due to his own ties to his father and siblings, who are Lebanese citizens living in Lebanon. Clearance is granted.

CASENO: 03-25593.h1

DATE: 10/28/2005

DATE: October 28, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-25593

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born and raised in Lebanon, but immigrated to the U.S. in 1989 and was naturalized as a U.S. citizen in 1996. Available information is sufficient to mitigate the foreign preference (Guideline B) security concerns due to his wife's family who are Lebanese citizens living in the U.S., and due to his own ties to his father and siblings, who are Lebanese citizens living in Lebanon. Clearance is granted.

### **STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding <sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On December 27, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (foreign influence). Applicant timely answered the SOR, and he requested a hearing.

The case was assigned to me on July 7, 2005, and I convened a hearing on August 3, 2005. The government submitted 11 exhibits (GE 1 - 11), and Applicant submitted seven exhibits (AE A - H). Applicant also testified, and presented the testimony of two other witnesses. DOHA received the transcript (Tr) on August 17, 2005.

### **FINDINGS OF FACT**

Applicant admitted all of the allegations in the SOR and his admissions are entered as facts. After a thorough review of the pleadings, transcript, and exhibits, I also find the following:

Applicant is 49 years old, and currently works for a defense contractor as a French and Arabic linguist, instructor, and translator. This is his first application for a security clearance, and the interim secret clearance he was initially granted was suspended pending the outcome of this case.

Applicant was born and raised in Beirut, Lebanon, but left in 1979 at age 19 to study in Algeria. In 1982, he moved to France where he completed his medical training in obstetrics and gynecology (OB/Gyn). Thereafter, he worked in France from 1982 until 1987, when he returned to Lebanon. Applicant was unable to establish a viable medical practice there due to political and cultural restrictions, so he immigrated to the United States in 1989. He was certified in 2003 to practice medicine in the U.S., but has worked as a linguist, translator, or teacher since arriving in the U.S.

Applicant and his wife, also born and raised in Lebanon, were married in Beirut in 1985. Applicant was naturalized as a U.S. citizen in July 1996, and his wife was naturalized in January 1997. Both renounced their Lebanese citizenship in May 2002. They have no financial interests or tangible assets in Lebanon or any other foreign country.

Applicant and his wife have two children, born in 1985 and 1993. In 1998, the children became U.S. citizens by virtue of their parents' naturalization, but were born in Lebanon. The older child was born in Lebanon after a complicated delivery. When it came time for Applicant's second child to be born, the couple returned to Lebanon so Applicant, not yet licensed to practice medicine in the U.S., could attend to the delivery.

Applicant's wife also works for a defense contractor. Her mother and siblings are either dual citizens of Lebanon and the U.S. or permanent resident aliens. All of them reside in the U.S. Her mother has worked as an instructor for a U.S. Army language training school, and her brother served in the 82<sup>nd</sup> Airborne in the first Gulf War. Her estranged father is serving a 25-year prison sentence for a drug offense conviction and will likely be deported to Lebanon after he completes his sentence.

Applicant has three brothers and two sisters. One brother and one sister are citizens of Lebanon living in France. His other siblings are citizens of and reside in Lebanon in or near Beirut. Applicant's father is in his 80's. He is a citizen of and resides in Lebanon, has a law degree and has worked his whole life as an educator. He is currently principal of a school and runs a humanitarian organization to benefit handicapped children in Lebanon. No one in Applicant's or Applicant's wife's families has ever been employed by or acted as an agent for a foreign government.

Applicant has characterized his relationship with his father as one of close friendship, but also as "a weak personal tie to Lebanon." He uses terms such as "good friend" and "mild friend" to describe his relationships with his siblings. (2) At hearing, when asked if there had been some falling out or estrangement among Applicant's family members, Applicant and his wife acknowledged Applicant's ties to his father and siblings are no different than any other family whose children are grown and establish their own lives. Applicant has traveled back to Lebanon most recently in 2000 for his mother's funeral, and in 2003 to advise his father during a course of treatment for skin cancer. He also made a point of

visiting with his brother in Paris in 2003 during a layover there. Applicant speaks with his father by telephone a few times annually and with his siblings less often.

Applicant is highly regarded for his linguistic skills and his work performance. It is clear from the references he provided that his ability to translate Arabic is much in demand these days. Applicant exhibits a positive attitude at work and his performance is team oriented. Several Army officers have recommended him for a position of trust based on his performance as a contracted translator, and for his insight into Arab and Islamic culture. His most recent supervisor testified in support of Applicant's character, reliability, and dedication to U.S. defense efforts and U.S. interests. Applicant has also been cited for his contributions to the Army's psychological operations and linguistics training efforts. <sup>(3)</sup>

Historically, Lebanon has had close ties with the U.S. and has a democratic form of government which allows representation of a variety of diverse factions within that country. Indicative of the diversity and inclusiveness of the Lebanese democracy is the fact several members of the terrorist organization Hezbollah are elected members of parliament. Since the late 1970s, Lebanon has been beset by prolonged civil wars, occupation by Syrian forces, and, most recently, by the presence in southern Lebanon of Islamic militant groups and terrorist organizations, including some with ties to Al-Qaida, bent on the destruction of Israel and the expulsion of U.S. interests from the Middle East. Recent events, such as the assassination of the Lebanese Prime Minister and car bombings in downtown Beirut have contributed to heightened concern about the viability of Lebanon's close ties to the U.S. and the overall stability of that country. While the Lebanese government is on record as opposing the goals and methods of these groups, it has done nothing to stop them or expel them from Lebanon. Lastly, Lebanon has a spotty human rights record, including government censorship of the media and restrictions on assembly, arbitrary arrests and detention, and torture aimed at groups intent on de-stabilizing the government. Also of concern in this regard are actions by the Lebanese judiciary as a result of political pressures. However, there is no indication the government of Lebanon itself targets U.S. citizens or interests to obtain intelligence at the expense of U.S. interests. <sup>(4)</sup>

## **POLICIES**

The Directive sets forth adjudicative guidelines<sup>(5)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of 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 and impartial common sense consideration of the 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 record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline B (foreign influence).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(6)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes 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>(7)</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.<sup>(8)</sup>

## 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.<sup>(9)</sup> Available information in this case shows, as alleged in SOR ¶¶ 1.a and 1.b, Applicant has ties to his own immediate family members in Lebanon. As alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.f, he also has ties to his wife's parents, brother and two sisters, who are Lebanese citizens living in the U.S. These facts support application of Guideline B disqualifying condition (DC) 1.<sup>(10)</sup> Available information also supports the SOR ¶ 1.g allegation that Applicant traveled to Lebanon in 2000 and 2003; however, that information does not, by itself, support application of any adjudicative condition.

I have reviewed the Guideline B mitigating conditions (MC) and conclude only MC 1<sup>(11)</sup> and MC 5<sup>(12)</sup> may apply here. As to MC 1, no one in Applicant's or his wife's family has any connection with or is an agent of the Lebanese government.<sup>(13)</sup> However, application of MC 1 also turns on the question of whether the relatives are "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."<sup>(14)</sup> As to Applicant's in-laws, it is unlikely they are in such a position because they all reside in the U.S. However, Applicant's father and siblings in Lebanon may be vulnerable to such pressure insofar as they live in and around Beirut, and there is ongoing violence there and in southern Lebanon fomented by terrorist groups operating there. Concern about their vulnerability to pressure by the Lebanese government must also take into account that country's human rights record. The Lebanese government may have committed human rights abuses, but those actions appear directed at the terrorist groups operating from Lebanon and with the intent to curtail terrorist activities. There is no indication such arbitrary actions would be directed against ordinary citizens such as Applicant's father and siblings.

Although it is unlikely the government of Lebanon itself would exert pressure on Applicant's family to gain access to U.S. classified information through his ties of affection, analysis of this aspect of MC 1 must also consider the terrorist groups operating in Lebanon. These groups have been included in statutory definitions of the term "foreign power" and

their presence in Lebanon must be considered, for purposes of MC 1 applicability, the same as a recognized foreign government or nation.<sup>(15)</sup> Because the terrorist groups operating in Lebanon and the surrounding areas are engaged in international terrorism with stated goals of destroying U.S. interests or expelling U.S. interests from the Middle East, MC 1 cannot apply here.

As to MC 5, Applicant and his wife have no assets, financial or otherwise, anywhere but in the United States. His professional and personal lives have long been established in this country. For the past 16 years, Applicant has lived and worked in the United States. Since September 2001, he has been employed by defense contractors as a linguist in support of Army language training of troops that will be operating in the Middle East, presumably in the global war on terror. Applicant renounced his Lebanese citizenship in 2002, before the current investigation began, and it is apparent his life and interests are predominantly in the U.S. Having personally heard Applicant's testimony and assessed his demeanor, I am convinced of the sincerity with which he asserts his commitment to supporting the interests of the United States against all others. Even acknowledging there is some risk involved in granting a clearance to this Applicant, with his presumed close ties of affection to his family in Lebanon, I conclude that risk is acceptable given the fact his interests are so deeply entrenched in the U.S., and because he appears to have the requisite character and integrity the government expects of those in whom it entrusts access to classified information. I conclude MC 5 applies, and, on balance, I further conclude Guideline B in favor of the Applicant.

I have carefully weighed all of the evidence, and I have applied the Guideline B disqualifying and mitigating conditions as appropriate. No single factor is dispositive of my decision in this matter. While the government is reasonably concerned about the presence of Applicant's family in a foreign country, a fair and commonsense assessment<sup>(16)</sup> of the record before me shows neither the foreign citizenship of Applicant's wife's family nor the presence of Applicant's family in Lebanon constitute an unacceptable risk that Applicant would undermine U.S. interests in favor of Lebanese interests if he is granted a security clearance. Accordingly, I conclude the available information is sufficient to resolve the government's doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests.

### **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): 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

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

### **DECISION**

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

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. GE 2.
3. AE A through H.
4. GE 5 - 10.
5. Directive, Enclosure 2.
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. *See Egan*, 484 U.S. at 528, 531.
8. *See Egan*; Directive E2.2.2.
9. Directive, E2.A2.1.1.
10. 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;
11. 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;

12. Directive, E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

13. See Title 50 U.S.C. § 1801(b).

14. Directive, E2.A2.1.3.1.

15. Title 50 U.S.C. § 1801(a)(4).

16. Required by Directive, E2.2.3.