

DATE: September 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26535

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's parents and two siblings are citizens and residents of Lebanon. His brother is a citizen and resident of France. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his foreign relatives. Clearance is granted.

STATEMENT OF THE CASE

On May 28, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were expressed under Guideline B (Foreign Influence).

On June 15, 2004, Applicant answered the SOR and requested a hearing. On October 14, 2004, I was assigned the case. On October 15, 2004, a Notice of Hearing was issued scheduling the hearing which was held on November 8, 2004. On November 16, 2004, DOHA received a copy of the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents, which were received on November 19, 2004. Department Counsel having no objections, the documents were admitted into evidence.

FINDINGS OF FACT

The SOR alleges security significant foreign influence. The Applicant admits his parents and two siblings are residents of and live in Lebanon, his brother is a citizen and resident of France, he sends his parents support, and he has visited Lebanon six times in the last 18 years. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

The Applicant is a 47 year old engineer who has worked for a defense contractor since September 2002, and is seeking a security clearance. Those that know him, state he is has remarkable technical ability (App Ex D).

Applicant was born in Lebanon in 1957. From 1977 to 1982, Applicant attended college in France, obtaining his engineering degree. In 1983, Applicant-- then 26 years old--came to the U.S. on a student visa to continue his education. In 1988, he obtained his PhD and married his wife who was born in the Philippines. In August 1999, Applicant became a naturalized U.S. citizen. In August 2001, his wife became a naturalized U.S. citizen. Becoming a U.S. citizen was a dream come true for Applicant. When naturalized, Applicant took an oath to protect the U.S. and he intends to honor that oath. Applicant interprets honoring that oath as doing whatever it takes to protect the United States, including bearing arms if required. The United States is his home. He has never regretted his decision to become a U.S. citizen. No other place would have given him the opportunities he has received here. He is free to work hard and free to follow his dreams. After becoming a U.S. citizen, he stated it was now up to him to make something of himself.

Applicant and his wife have three children ages 9, 11, and 14, who are all U.S. citizens. They are involved in soccer, tennis, ballet, music, piano, and violin lessons. Applicant is a good father. His children are his priority and life. All of his children were born in the U.S. and their future is here. Applicant and his wife purchased a home in 1992 worth \$180,000. While attending graduate school in Kansas, they lost an unborn child who is buried there. Applicant was specifically asked if he would ever return to live in Lebanon. Applicant was emotional when he stated he could never see leaving the U.S. and leaving behind the child buried in Kansas. The U.S. is their home.

Applicant's parents and two siblings are citizens and residents of Lebanon. He calls them monthly and talks about health, school activities, and family matters. His relatives do not know his employer or the nature of his work. His father, age 81, is a farmer who tends grape and cherry orchards. His mother, age 73, is a homemaker. Applicant provides his parents \$1,000 per year. Even without his support, his parents would be financially stable. His brother is in computer sales and his brother's wife, also a Lebanese citizen, is a bank vice president. Applicant's sister is a homemaker married to a retired Lebanese military member. His sister's oldest child lives in Texas. Applicant has monthly contact with this person. His sister's other two children are permanent residents of Canada. Applicant has infrequent telephonic contact with these individuals.

Applicant's other brother and his brother's wife were born in Lebanon, but are now French citizens living in France with their three children. His brother is a journalist and his wife works for a cultural organization for the arts. In 1988, his brother came to the U.S. to attend Applicant's wedding. He has monthly telephone contact with his brother in France.

In 1986, 1993, 1994, 1997, and 1999, Applicant visited Lebanon for three weeks to a month. During the 1999 trip, Applicant and his wife stopped in France to visit Applicant's brother. He also visited his brother in France in 2000, following a business trip to Europe. In 2001, he visited his parents for a week, and in 2003 he visited Lebanon for three weeks. Applicant's wife accompanied him on all but three of the trips. During his six visits, which were made over an 18 year period, his parents have never asked him about his work.

Applicant has a cousin who serves in the Lebanese military. Applicant has had brief contact with his cousin during one or two of his trips to Lebanon.

Applicant's wife's has a brother and two sisters living in the U.S. One brother and one sister are naturalized U.S. citizens and the other sister is a permanent resident. His wife has three brothers and three sisters who reside in the Philippines. Although his wife has weekly telephone contact with her sisters in the U.S., Applicant has no contact with his wife's relatives.

From 1975 through 1991, Lebanon experienced civil war. Life in Lebanon has greatly improved since the end of the war. Lebanon is experiencing very positive change, change for the better. In May 2000, Israel withdrew its military forces from a security zone in southern Lebanon. Syria has recently moved its military forces out of Lebanon. In May 2004, the US Department of State reissued a travel warning (Gov Ex 5) reminding U.S. citizens of ongoing safety and security concerns in Lebanon. The Country Reports on Human Rights Practices, released by the U.S. Department of State (Gov Ex 6) in February 2004, stated the Government's overall human rights record remains poor and serious problems remained even with improvement in some areas.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline B (Foreign Influence).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. 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, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (2)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the United States, reside in a foreign country, 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.

Applicant's parents, brother, and sister are citizens of and living in Lebanon. He has a brother who is a citizen of and living in France. Disqualifying Condition (DC) 1 (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*) applies. He has monthly telephone contact with them and has visited Lebanon six times during the last 18 years with his most recent visit in 2003.

The following information about Lebanon and its relations with the United States, that was administratively noticed at the government's request, is significant in determining whether a security concern exists under the known facts of the case. From 1975 through 1991, Lebanon experienced civil war. Since the end of the war, life in Lebanon has greatly improved and Lebanon is experiencing very positive change for the better. Israel withdrew its military forces in 2000 and in 2005 Syria removed its military forces from Lebanon. In May 2004, the US Department of State reissued a travel warning reminding U.S. citizens of ongoing safety and security concerns in Lebanon. The Country Reports on Human Rights Practices, released in February 2004, stated the Government's overall human rights record remains poor and

serious problems remained even with improvement in some areas.

The following Mitigating Condition (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B MC 1 (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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 person(s) involved and the United States.*)

There is no evidence to suggest that Applicant's family members are, or ever have been, Lebanese agents, so the issue under MC 1 is whether they are in a position to be exploited by Lebanon. Lebanon is a country with ongoing safety and security concerns for U.S. citizens in Lebanon. Additionally, the Government's overall human rights record remained poor and serious problems remained even with improvement in some areas. However, there is no indication that the Lebanese government has ever attempted to exploit any resident of Lebanon for the purpose of compromising a security clearance holder within the United States. More specific to the facts of this case. Applicant has been a resident of the United States for more than twenty two years and a citizen for six years. His Lebanese relatives have resided in that country during this time.

The best predictor of whether Applicant's relatives are in a position to be exploited in the future is the Lebanese government's past conduct. Since Applicant came to the United States in 1983 no action has been taken by the Lebanese government to exploit his relationship with relatives in Lebanon.

Applicant also receives credit under the "whole person" concept. He earned his PhD, has a stable family life, purchased a home, and has earned the love and respect of his family. These are all indicators of a mature, steady, responsible, and trustworthy individual.

Applicant has a strong love for the United States. Becoming a U.S. citizen was a dream come true for him. His future, and that of his wife and children, is in the United States. His family appears to be the typical middle class family with the children involved in sports and music lessons. Applicant and his wife are both first generation Americans who have been home owners since 1992. They have no intention of ever living anywhere other than the United States. Applicant was emotional when he talked of the death of his unborn and the child's burial in Kansas. He will never leave the United States and leave behind the child buried in Kansas. The United States is his home. He took an oath to protect the United States. An oath he intends to honor. While it is impossible to say with certainty what would actually occur in the future, in view of Applicant's strong ties to the United States and six years of loyal citizenship.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I am satisfied that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Foreign Influence: 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

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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15