

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant is a 25-year-old engineer native born U.S. citizen educated in the U.S. whose parents emigrated from Lebanon. The family lived in Lebanon for four years in Israeli occupied lands when Applicant was between ages nine and thirteen. He has been back twice as an adult to visit. He has a grandmother and several aunts and uncles still living there with whom he has occasional contact. He held an entry visa for Lebanon in his U.S. passport as a result of his first trip when he was nine years old but the passport containing it has expired. Applicant has mitigated security concerns. Clearance is granted.

CASENO: 04-03285.h1

DATE: 04/08/2005

DATE: April 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03285

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 25-year-old engineer native born U.S. citizen educated in the U.S. whose parents emigrated from Lebanon. The family lived in Lebanon for four years in Israeli occupied lands when Applicant was between ages nine and thirteen. He has been back twice as an adult to visit. He has a grandmother and several aunts and uncles still living there with whom he has occasional contact. He held an entry visa for Lebanon in his U.S. passport as a result of his first trip when he was nine years old but the passport containing it has expired. Applicant has mitigated security concerns. Clearance is granted.

STATEMENT OF THE CASE

On August 27, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated September 2, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 14, 2005, and a Notice of Hearing was issued the same day for a hearing held on February 11, 2005. The Government introduced five exhibits at the hearing and the Applicant introduced two. All were accepted into evidence. The Applicant testified on his own behalf. The transcript was received on February 23, 2005.

FINDINGS OF FACT

Applicant has denied all allegations under Foreign Preference-Guideline C and admitted the allegations under Foreign Influence-Guideline B with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 25-year-old employee of a defense contractor working as an engineer. His parents emigrated from Lebanon and he was born in the U.S. In 1988 when he was nine years old his parents and their three children went to Lebanon so that the children could better know their grandparents and become familiar with their ancestral lands and language. The grandparents owned and operated a small farm. The visit turned into a four year stay during which time his father worked in the construction industry. During the four years they lived in an area in southern Lebanon that was occupied by Israel in the period of Israeli occupation. (Exh. 5). Travel into the occupied area required entry visas since Israel controlled the border. Most of the better jobs were either as a result of the occupation or across the border in Israel which was open to those with appropriate entry documents.

Applicant had an entry visa for entering Lebanon as a result of his family's first visit in 1988 when he was nine. Although he used it again on his two subsequent trips, it was in his passport which expired in January, 2004. He now has a new passport without a visa for Lebanon (Exh. A). Applicant does not have dual citizenship with Lebanon and the U.S. and has never held a passport of Lebanon.

After returning to the U.S. in 1992 when Applicant was 13, the family settled in a town where his father owns a small store. Applicant has returned to Lebanon twice to visit family with his mother in 1997 and 2001. The last trip was immediately after Applicant graduated from college and they stayed three months. Aside from the four years spent in Lebanon during elementary school, Applicant has been educated in the U.S. through university level and has no loyalty to Lebanon. He has never had a Lebanese passport.

Applicant's two siblings live in the same town as their parents and are also engaged in business. Applicant is saving to buy a house in the same community for weekend visits as his work is over 100 miles from the family home.

Applicant has elderly maternal grandparents and several aunts and uncles living in Lebanon. He has visited them when in Lebanon but his contacts from the U.S. are infrequent and casual in the form of telephone conversation two or three times a year. None of the relatives have ever worked for any government. He owns no property in Lebanon and has no interest in inheritance of any of the family property. He has no plans to visit Lebanon in the near future.

Applicant is well regarded in his job, loves his work, and has great interest in what he is doing in the defense community. Applicant is single, has a U.S. born girlfriend, and participates in church and community activities similar to those enjoyed by young single college graduates in a metropolitan area.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

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 all allegations set forth in the SOR:

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1.), and the possession and/or use of a foreign passport. Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.)

Applicant has never held a Lebanese passport and is not a dual citizen. The existence of a visa only permitted him to enter the country and even that is no longer held by him.

Conditions under Guideline B 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 in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The family members of the Applicant are his two grandparents who are elderly and several aunts and uncles with whom he has infrequent contact. None of them pose a security threat or are in a position to be influenced by the conduct of their government. While Lebanon is an unstable country in a precarious environment, the presence of these relatives there does not automatically disqualify Applicant from holding a security clearance. Mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. 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. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is an impressive person who, at a young age, has a responsible position of trust and is doing a good job for his company. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

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 C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge