

KEYWORD: Foreign Influence

DIGEST: Applicant's mother and three sisters are citizens and residents of Lebanon. His older brother is a citizen of the United States and a resident of Lebanon. Applicant has traveled to Lebanon at least nine times since 1995 to visit his family. Applicant's familial ties to citizens and residents of Lebanon raise serious security concerns because they could be exploited by terrorist groups operating inside Lebanon, resulting in the compromise of classified information. Clearance is denied.

CASENO: 04-04151.h1

DATE: 09/30/2005

DATE: September 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04151

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's mother and three sisters are citizens and residents of Lebanon. His older brother is a citizen of the United States and a resident of Lebanon. Applicant has traveled to Lebanon at least nine times since 1995 to visit his family. Applicant's familial ties to citizens and residents of Lebanon raise serious security concerns because they could be exploited by terrorist groups operating inside Lebanon, resulting in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 24, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing April 8, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on July 7, 2005. I convened a hearing on September 7, 2005, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced two exhibits, and offered six documents for administrative notice. Applicant neither called witnesses nor introduced exhibits. The Government's exhibits were numbered 1 and 2, and its documents offered for administrative notice were numbered 1 through 6. All exhibits and documents were admitted into evidence without objection. DOHA received the transcript (Tr.) of the proceeding September 19, 2005.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct alleged under Guideline B, Foreign Influence. In his answer to the SOR, Applicant admitted all three allegations. His admissions are incorporated as findings of fact.

Applicant is a 39-year-old principal engineer employed by a defense contractor. He is unmarried. Applicant was born in Lebanon and received his elementary and secondary schooling there. He came to the U.S. in 1984, at the age of 18, to pursue higher education. He became a naturalized U.S. citizen in 1997. (Ex. 1.)

Applicant has one brother, fourteen years older than he is, who received his medical training in the U.S. and who helped Applicant find a suitable college to attend when he came to the U.S (Tr. 32-33. Applicant selected a school in a State that had a large Lebanese community. During his student days, Applicant was active in a Lebanese culture club at his university. (Tr. 44.)

Applicant's only brother is a U.S. citizen who resides in Lebanon. He is a physician and chairman of a medical department at a university hospital. The brother's wife is a naturalized U.S. citizen and resident of Lebanon. The couple has three children, all born in the U.S., who reside with their parents in Lebanon. (Tr. 28; 48-50.)

Applicant's family members live in Sidon and Beirut. He makes an annual trip to Lebanon to visit his family every year in December. He made these trips in 1995, 1996, 1997, 1998, 1999, 2000, 2002, 2003, and 2004. He usually stays for about three weeks. Since becoming a U.S. citizen, he has used his U.S. passport to travel to Lebanon. Upon arrival in Lebanon, he acquires a no-cost entry visa at the airport. (Tr. 26-27; 36-37.)

Applicant's late father owned orchards in Lebanon and had a business that exported fruit to the Arab states. (Tr. 35-36.) Applicant's mother sold the business but retained some of the orchards after her husband's death. Applicant and his four siblings have expectancy interests in the mother's home and orchards. Applicant does not know the U.S. money value of these interests. (Tr. 54.)

Applicant's mother is a citizen and resident of Lebanon. She receives proceeds from her late husband's pension. (Tr. 27.) Applicant has three sisters who are citizens and residents of Lebanon. The three sisters are married. They are housewives and do not work outside their homes. None of Applicant's brothers-in-law works for the Lebanese government. (Tr. 28.)

Two of Applicant's sisters visit him every summer in the U.S. His brother makes two trips to the U.S. each year, and Applicant sees him when he is in the U.S. Applicant communicates with his mother weekly by telephone. He communicates with his siblings once a month by email or telephone. (Tr. 29-30.)

I take administrative notice of a Consular Information Sheet on Lebanon, current as of June 23, 2005,⁽³⁾ and a document entitled "Travel Warning."⁽⁴⁾ The Consular Information Sheet on Lebanon states that "Americans have been the targets of numerous terrorist attacks in Lebanon" and it advises U.S. citizens who travel to Lebanon to exercise heightened caution when traveling in parts of "the southern suburbs of Beirut, portions of the Bekaa Valley and South Lebanon, and the cities of Sidon and Tripoli" because the terrorist group Hizballah is active in those areas. U.S. citizens are further advised to avoid travel to Palestinian refugee camps in Lebanon where terrorists with links to Al-Qaida have targeted Lebanese, U.S. and other foreign government interests.

The State Department Travel Warning on Lebanon, issued April 21, 2005, urges U.S. citizens to carefully weigh the necessity of their travel to Lebanon in light of recent assassinations and car bomb attacks. The Travel Warning also notes that the U.S. Government considers the potential threat to its personnel assigned to Beirut sufficient to require them to work and live under a strict security regime. The Travel Warning also notes that American air carriers are prohibited from using Beirut International Airport because of concern about aircraft and airport security arrangements. For similar reasons, the Lebanese air carrier is not permitted to fly into the United States.

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* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or.

10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother and three sisters are citizens and residents of Lebanon (¶ 1.a.); that Applicant's brother is a citizen of the U.S. who resides in Lebanon (¶ 1.b.); and that Applicant traveled to Lebanon in at least 1995, 1996, 1997, 1998, 1999, 2000, and 2002. (¶1.c.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that international terrorist groups are operating in Lebanon and are actively targeting American citizens and interests. These hostile actions by groups in Lebanon threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Lebanon could be vulnerable to coercion, exploitation, or pressure.

Applicant admits all allegations in the SOR. His admissions raise security concerns under Disqualifying Conditions (DC) E2.A2.1.2.1 and E2.A2.1.2.6. Applicant's mother and three sisters are citizens and residents Lebanon. Applicant's brother is a U.S. citizen residing in Lebanon. The presence of these immediate family members in Lebanon raises security concerns under E2.A2.1.2.1 of Guideline B. In his answer to the SOR and at his hearing, Applicant acknowledged nine trips to Lebanon since 1995, and he stated he intends in the future to make yearly visits to his family in Lebanon. These actions could make Applicant vulnerable under DC E2.A2.1.2.6 of Guideline B to coercion, exploitation, or pressure by groups in Lebanon hostile to the U.S. and its policies.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. Mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's mother, three sisters, and brother are agents of a foreign power, they are citizens of a unstable country where groups with interests antithetical to the United States are not constrained from acting against U.S. interests. Applicant offered no evidence to rebut the Government's assertion that his family members in Lebanon could be exploited by these groups in a way that could force him to choose between loyalty to his family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005) Accordingly, C E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's contacts with his family members who are citizens and residents of Lebanon are based on ties of familial affection or obligation. Applicant's contacts with his mother and siblings are frequent and personal. Accordingly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationships with his mother, three sisters, and brother.

Nothing in Applicant's answers to the SOR suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a. through 1.c. under Guideline B of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Prepared by the Bureau of Consular Affairs, U.S. Department of State, and admitted to the record as Government Ex. 1, for Administrative Notice.

4. Dated April 21, 2005 and prepared by the Bureau of Consular Affairs, U.S. Department of State. This document was admitted to the record as Government Ex. 2, for Administrative Notice.