

KEYWORD: Foreign Influence

DIGEST: The government failed to establish foreign influence security concerns where Applicant's sisters were citizens of Lebanon and legal permanent residents of the U.S., and all his other immediate family members were naturalized citizens and residents of the U.S. Clearance granted.

CASENO: 04-04544.h1

DATE: 05/31/2006

DATE: May 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04544

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The government failed to establish foreign influence security concerns where Applicant's sisters were citizens of Lebanon and legal permanent residents of the U.S., and all his other immediate family members were naturalized citizens and residents of the U.S. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 11 April 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence. ^(U) Applicant answered the SOR on 19 April 2005 and requested a decision on the record. He respond to DOHA's 12 July 2005 File of Relevant Material (FORM) on 15 August 2005. The record closed on 15 August 2005 when Department Counsel indicated no objection to the response. DOHA assigned the case to me 7 October 2005.

FINDINGS OF FACT

Applicant admitted traveling to Lebanon in 1996, 1999, and 2000 (SOR 1.c.) and his father's efforts to sponsor Applicant's two sisters--residing in Lebanon-- for entry into the U.S. (SOR 1.b); accordingly I incorporate those admissions as findings of fact. He denied that his sisters are citizens of Iraq residing in Lebanon (SOR 1.a.).

Applicant--a 41-year-old principal communications engineer for a defense contractor since February 1991--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Iraq in 1964, immigrated to the U.S. in March 1983 to attend college, and became a naturalized U.S. citizen in February 1996. In December 1996, he traveled to Lebanon to visit his father and two sisters for

Christmas and New Year's. ⁽²⁾ Applicant also traveled to Lebanon to visit his sisters in July 1999 and December 2000, again to celebrate Christmas and New Year's with them.

Sometime between January 1997 and July 1999, Applicant's father immigrated to the U.S. He became a naturalized U.S. citizen in September 2003, and immediately began the process of sponsoring his two daughters (Applicant's sisters) for entry into the U.S. They became legal permanent residents of the U.S. in May 2004. Applicant's mother--a native-born Lebanese--is deceased.

Since August 1990, Applicant has been married to a native-born Syrian who became a naturalized U.S. citizen in June 1996. Her father (Applicant's father-in-law) was a native-born Syrian who became a naturalized U.S. citizen in June 1990. Applicant's aunt (his father's sister) was a native-born Iraqi who became a naturalized U.S. citizen in 1989.

In his 19 April 2005 sworn statement, Applicant opined that he could not be influenced by his sisters or extended cousins (not otherwise identified) living in Lebanon, Iraq, or Armenia. ⁽³⁾ He asserted that they were not affiliated with any organization seeking to do harm to the U.S.

Lebanon is a nominal democracy with a less-than-perfect human rights record. It has both a long history of civil war and of foreign influence by Syria. Lebanon is not a state sponsor of terrorism, but is a permissive environment for groups recognized by the U.S. as terrorist organizations, considered by Lebanon as "freedom fighters" against Israel. The U.S. State Department continues to maintain a travel warning for U.S. citizens contemplating travel to Lebanon.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁽⁴⁾

CONCLUSIONS

At the outset, I note that the government poses security concerns about Applicant only with regard to the potential influence presented by his connections to Lebanon, a nation he has never lived in, and not Iraq, Syria, or Armenia, nations where his wife, in-laws, and distant cousins may reside or have resided. For reasons that follow, I conclude that the government failed to establish security concerns under Guideline B.

The lawful activity of Applicant's father, a U.S. citizen, to bring his two daughters to the U.S. from Lebanon (SOR 1.b.) raises no security concern cognizable under Guideline B, and the government articulates no reason why this activity could demonstrate a potential point of foreign influence on the father--much less the Applicant.⁽⁵⁾ Accordingly, I find SOR 1.b. for Applicant.

In similar fashion, Applicant's travel to Lebanon has no independent security significance under Guideline B. At best, the travel helps establish Applicant's close ties of affection to his sisters, a point not seriously at issue here. Accordingly, I find SOR 1.c. for Applicant.

What remains of the government's allegations, denied by Applicant, is the citizenship and residence of his sisters (SOR 1.a.). The record evidence establishes that when the SOR was issued, Applicant's sisters were citizens of Lebanon and legal permanent residents of the U.S. The only potential disqualifying condition⁽⁶⁾ (DC) is DC1.⁽⁷⁾ However, the sisters are no longer residents of, or present in, a foreign country.⁽⁸⁾ While they technically meet the "foreign citizenship" prong of DC1, the government presented no evidence to support an analysis that the citizenship raises a security concern that does disqualify Applicant. Applicant no longer has any immediate family residing in a foreign country. Except for his sisters, all his immediate family, plus his in-laws, are naturalized U.S. citizens. Applicant no longer has any family reasons to travel to Lebanon and it appears that neither his father or sisters have any reason to return to Lebanon. His sisters may remain in the U.S. permanently, whether or not they apply for U.S. citizenship when eligible.⁽⁹⁾ Applicant himself has no other ties to Lebanon beyond those raised when he had family living there.

Further, even if I concluded that the government had established security concerns under Guideline B, I would find those concerns mitigated. None of Applicant's family members in Lebanon were agents of a foreign power or subject to influence by a foreign power as they all reside in the U.S. now.⁽¹⁰⁾ In addition, there is no evidence that the Lebanese government is actively engaged in the collection of U.S. intelligence such that would make Applicant or his family likely targets for coercion, duress, or influence. The government's evidence explains the links to terrorism that are on-going in Lebanon and the way that those terrorist organizations operate, the increase in terrorism, and the increase in membership in terrorist groups. Several of the groups that are frequently in the news, for example Hizballah and Hamas, operate in Lebanon and practice terrorist acts against Israelis and against U.S. citizens as well as indiscriminate violence in order to draw attention to themselves and increase their membership and their power. There is no indication they use terrorism to gain access to U.S. information. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based solely on his sisters Lebanese citizenship. Accordingly, I resolve Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: 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 Applicant. Clearance granted.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant's sisters immigrated to Lebanon from Iraq after the first Gulf War in 1991. The record suggests that Applicant's father also immigrated to Lebanon then, because Applicant's clearance applications report his father's citizenship as Lebanese. While Applicant's sisters lived in Lebanon, they also became Lebanese citizens.
3. This is the only government document that provides evidence, direct or indirect, that Applicant's sisters were ever citizens of Iraq. While that may be a reasonable inference from the facts that both Applicant and his father were born in Iraq, and his sisters and father immigrated to Lebanon from Iraq in 1991, there is no evidence of the sisters' places of birth.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. As the father's children, they would have higher priority for immigration to the U.S. than they would have as Applicant's siblings, a fact corroborated by the father obtaining U.S. citizenship in September 2003 and bringing his children to the U.S. in March 2004.
6. E2.A2.1.2. Conditions that *could* raise a security concern and *may* be disqualifying include:
 7. 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;
8. I need not decide if the sisters were ever citizens of Iraq and residents of Lebanon. Applicant denied this allegation and the government's evidence, mixed at best, was overtaken by the sisters immigration to the U.S. regardless of their citizenship. The government pursued security concerns based only on their residence in Lebanon, not their alleged citizenship in Iraq.
9. Which I infer from the fact that they were allowed to immigrate to the U.S. I also infer that they would not have been allowed to immigrate to the U.S. if they had been on any U.S. Government watch list.
10. 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 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.