

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, who has had a security clearance since 1987, mitigated foreign preference concerns after he returned his foreign passport to the Embassy of Lebanon. Under a whole person analysis he also mitigated foreign influence security concerns over bonds to his mother, sister, and brother who are citizens of Lebanon and reside there. Applicant has strong ties to the U.S. as a resident here and a naturalized citizen for 33 years. Assurances that Applicant would contact appropriate U.S. officials if any pressure were attempted are credible and are bolstered by his colleagues positive assessments of his exemplary work and of him as a very loyal and trustworthy person. Clearance is granted.

CASENO: 04-05551.h1

DATE: 02/02/2006

DATE: February 2, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05551

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who has had a security clearance since 1987, mitigated foreign preference concerns after he returned his foreign passport to the Embassy of Lebanon. Under a whole person analysis he also mitigated foreign influence security concerns over bonds to his mother, sister, and brother who are citizens of Lebanon and reside there. Applicant has strong ties to the U.S. as a resident here and a naturalized citizen for 33 years. Assurances that Applicant would contact appropriate U.S. officials if any pressure were attempted are credible and are bolstered by his colleagues positive assessments of his exemplary work and of him as a very loyal and trustworthy person. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) ⁽¹⁾ to the Applicant on March 3, 2005. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant her access to classified information. The SOR alleges specific concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant replied to the SOR allegations in an Answer notarized on March 9, 2005, where he denied allegations 1. and 1.a.. Initially, he requested a decision without a hearing; however, the Government requested a hearing. (Answer; TR 7)

After Department Counsel stated the case was ready to proceed on June 13, 2005, the case was transferred to me on June 17, 2005. On June 29, 2005, DOHA issued a Notice of Hearing and set this case to be heard on July 26, 2005, in a city near where Applicant lives and works. Subsequently, he requested a different location, so an Amended Notice of Hearing issued on July 18, 2005, changed the location. At the hearing the government presented four exhibits (Exhibits 1-4) which were admitted into evidence without objection. Department Counsel's request that administrative notice (AN) be taken of the information contained in Exhibits I - VII was granted as Applicant did not object.

Applicant called four witness, testified himself and offered twelve exhibits (Exhibits A-L). Department Counsel did not object to Exhibits A-L which were admitted into evidence. The transcript (TR) was received on August 5, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 65 years old, is a retired professor and has worked for a defense contractor (Employer #1) in State #1 in an adjunct capacity since November 2002 for a U.S. military college and also for a military university. Generally, he now acts as an advisor on how to deal with the press as he is a public affairs specialist. In March 2003 he completed a Security Clearance Application (Standard Form 86). Previously, he was granted a State Department Top Secret clearance in May 1987 and a Sensitive Compartmented Information (SCI) clearance by the Defense Department in September 1994. From 1994 to 2002 he was a professor at the military college where he now consults. Previously, he had submitted a security clearance application in August 2000. Also he completed a Personnel Security Questionnaire in September 1994 where he disclosed a Top Secret clearance granted in May 1987 by the U.S. Information Agency. He has had a clearance continuously since 1987 without a single security violation. (Answer; Exhibits 1, 2, 3, 4; Exhibit E; TR 80-83, 95-96) Formerly, he worked as a professor at a state university for twenty years. (TR 82-83) He has two foreign service awards and two or three awards from the military college where he taught. (TR 96)

Currently, Applicant has an Interim Top Secret clearance pending the completion of his appeal action according to a security specialist at the facility where he consults.

Applicant studied at a U.S. university from 1963-66 and later received a Ph.D. in January 1969. (Exhibits 1, 2,3,4) He married his wife, a U.S. citizen, in 1965 in the U.S. They have three children born in 1966, 1968, and 1969. He was one sibling born in 1944 who also became a naturalized U.S. citizen in 1980 and who lives overseas. (Exhibits 1, 2)

Foreign Preference and Foreign Influence

Born in Lebanon, Applicant became a naturalized U.S. citizen in January 1972. He has a mother and two siblings who are citizens and residents of Lebanon. (Exhibits 1, 2; TR 77-78) His father who had worked for an American company is deceased. His mother who is 90 lives in a small village and has never worked. His sister is a private sector lawyer in Lebanon. His brother is a private banker. None have any ties to the government. An expert in Middle East threat assessment, Applicant believes his family in Lebanon face "no threat whatsoever today." (Exhibit F; TR 85, 92-93, 95) He explained his reasons for concluding that his relatives in Lebanon are not subject to pressure as "they are part of that society The Lebanese do not, now, do not fight against other Lebanese." (TR 96) Applicant argued that today extremists are not interested in what you know; they are only interested in if you have ties to the U.S. governments

which makes an individual a target. Since he knows the language, he is "street-wise." (TR 79, 97-98)

Applicant acquired a Lebanese passport for security considerations when he visited Lebanon to avoid attention that his U.S. passport might have drawn to him. From 1997 to 2003 he was doing a research project for the government on the proliferation of weapons of mass destruction. To do that research he was paid by the U.S. government to travel there and had three different passports: an official U.S. passport, a second official U.S. passport. He also used his U.S. passport where he had to obtain a three month's visa at the Lebanese Embassy in September 1994 and in June 1998. (Exhibits 1, 2; Exhibits A, B, C, D, E, F; TR 77-78, 90-91)

At that time of the DSS interview in June 2003 he had a valid Lebanese passport effective April 2000 to April 2005. However, he explained that he asked State Department advice on his course of action as at the time he wanted to travel to visit his sick father but he could not use a U.S. passport to travel to Lebanon because of a U.S. travel ban. Applicant only used this Lebanese passport twice in 2000 to time to Lebanon to visit his father who was ill and after his death. Prior to traveling, Applicant advised his superiors and got permission to travel to Lebanon. On February 4, 2004, he returned that passport to the Embassy of Lebanon with no intent for future use. (Answer; Exhibit I; TR 76-77, 87-90, 99) Subsequently, he has visited Lebanon in 2003 and 2004 on his U.S. passport. (TR 94-95)

Applicant's wife, who has been married to him for 40 years, testified that she was last in Lebanon in 2004 and prior to that in 1969. She confirmed that in 2004 Applicant traveled to Lebanon on his U.S. passport. They stayed with Applicant's mother in her village; and she felt safe. Although their third child was born in Lebanon, they applied for a U.S. passport for him and did not establish him as a citizen of Lebanon because of their ties to the U.S. He contacts his family in Lebanon once a week by telephone. (TR 58-65)

While the Government established concerns over the political climate and security concerns in Lebanon through their documents offered for Administrative Notice (Exhibits I-VII), Applicant and his witnesses nevertheless established his overriding trustworthiness and loyalty to the United States. Given Applicant's extensive ties to the U.S. with his immediate family in the U.S. and his expertise in this field, I conclude it is unconvincing any argument that he would yield to pressure if any of his relatives were coerced by the government of Lebanon. As discussed below, his references paint a picture of an "extraordinarily well regarded" individual who has a security clearance since 1987. (Exhibits F, H; TR 35-45)

References

Applicant's research colleague, Professor G, has a Ph.D. in political science and succeeded to Applicant's position as chair of a department at the military college. They were colleagues at the military college for three years. Professor G testified that he had also traveled to several countries with a travel warning in order to do research. He worked for the U.S. Central Command (CENTCOM) both in the U.S. and overseas for six months sharing his academic knowledge. At

the same time Applicant was also working for CENTCOM on strategic communication issues as they each were members of the experts advisory board. Holding a top secret security clearance, Professor G testified favorably on Applicant's character and integrity and recommended him for a security clearance. (TR 25-33)

Another expert, Professor L, who has taught at the military college for eleven years, testified that government researchers who are a regional specialists must travel to the region they are studying. Applicant is a seasoned traveler to dangerous areas. He has known Applicant for seven years and is aware of Applicant's publications (Exhibit F) and of his travel to those regions. Professor L has had a top secret SCI clearance since 1986; he strongly recommended Applicant for a security clearance as his integrity, loyalty to the U.S., and trustworthiness are absolutely beyond reproach. He explained that under their military college system they do not have a professor emeritus category, so distinguished professors who retire are granted adjunct professor status. The Applicant has that status which has "a certain amount of honor and prestige associated with it." In addition, Professor L testified that the Applicant is "extraordinarily well regarded throughout the entire community of national security scholars and practitioners." (Exhibits F, H; TR 35-45)

Professor T testified he has been in the military reserves for 28 years and is a lieutenant colonel in military intelligence and a foreign area officer. He has traveled to a variety of countries where the State Department has issued warnings. Professor T and Applicant are also colleagues on the expert board of advisors for CENTCOM where Applicant is highly regarded. Professor T has had a top secret SCI clearance for twenty years. He has known Applicant for four years; he testified that he would trust Applicant in security situations. Professor T is confident that if Applicant's family were pressured in Lebanon that he would take the appropriate actions. He does not view Applicant as a security risk. Applicant is needed and has an important contribution to make. (TR 47-57)

A military officer, who served on the joint staff policy group and worked with Applicant in 2004, rated his performance "superlative" because of his expertise. Applicant "has demonstrated

his above reproach character and allegiance to the United States under the most difficult situations in the various countries of the Middle East." (Exhibit J)

The director of regional studies, who has known Applicant since 2002 and has worked with him on a research team, stated that Applicant has "served this nation with honor and fidelity." He has the highest regard for Applicant's professionalism, personal integrity, and ethics. He recommended Applicant be granted a security clearance. (Exhibit K)

Professor M, who has known Applicant for ten years, also recommended Applicant for a security clearance as he is "a patriotic American citizen, a splendid public servant, and renowned academic expert. The U.S. government is fortunate to have access to him for his outstanding knowledge of Middle Eastern affairs and for his ability to advise senior officials on policy." (Exhibit L)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant adjudication guidelines as set forth below:

Guideline C - Foreign Preference

E2.A3.1.1. The concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Guideline B - Foreign Influence

E2.A2.1.1. The concern: 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: (1) not citizens of the United States or (2) 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching a fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Preference

Applicant has mitigated the Government's security concerns over his possible preference for a foreign country over the United States as he complied with the security requirements of the OASDC3I memorandum of August 16, 2000 by surrendering his foreign passport in 2004 and returning it to the embassy. While Applicant's having obtained, and twice used his foreign passport after he became a naturalized U.S. citizen for travel to Lebanon, raised legitimate foreign preference concerns, special circumstances surrounded that use as discussed below. Otherwise he used his U.S. passport - personal or official -- exclusively. Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.2. Possession and/or use⁽²⁾ of a foreign passport. His conduct raised a security concern over his possible preference for Lebanon over the U.S. as the possession of a foreign passport could allow Applicant to travel without accountability and outside the ambit of U.S. immigration controls which raises concerns when someone has access to U.S. classified information.

However, given his father's illness and death and the special travel restrictions that applied to travel to Lebanon, there were special circumstances that mitigate his conduct in using his foreign passport. Looking at him as a whole person, I considered (E.2.2. Adjudication Process) these factors: E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. Significantly, Applicant is highly acclaimed by a large number of his colleagues who have observed his work in a highly sensitive area and uniformly assess him as reliable and trustworthy. He has had a security clearance since 1987 without incident. He informed his superiors of the special circumstances of his need to travel to Lebanon in 2000. For example, Professor L strongly recommended Applicant for a security clearance as his integrity, loyalty to the U.S., and trustworthiness are absolutely beyond reproach. In addition, Professor L attested that the Applicant is "extraordinarily well regarded throughout the entire community of national security scholars and practitioners."

Consequently, I conclude Applicant has mitigated⁽³⁾ these security concerns. Having weighed the record evidence as a whole under the other factors outlined in Directive, I conclude Applicant's disqualifying conduct was not undertaken in such a way as to establish his preference for a foreign country over the U.S. Additionally, considering the totality of the evidence, I conclude that Applicant who became a naturalized U.S. citizen in 1972 has demonstrated a strong preference for the U.S. over any other foreign nation by giving up his foreign passport. Therefore, I conclude Guideline C for Applicant. Thus, favorable findings are warranted with respect to subparagraphs 1.a. through 1.d. of the SOR.

Foreign Influence

Because of Applicant's family ties in Lebanon the government raised foreign influence concerns under disqualifying conditions (DC): 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; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. Applicant's mother, sister and brother are citizens of Lebanon and currently reside there. The Government established through the documents they submitted for administrative notice (AN I-VII) the U.S. and Lebanon do not have identical interests over vital matters.

While I have seriously considered these security concerns and the documents submitted for administrative notice on Lebanon, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated⁽⁴⁾

the Government's security concerns over possible foreign influence. In evaluating the relevance of his conduct, I considered the following Adjudication Process factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

As Applicant's colleagues established, Applicant has a substantial history with his employer and is viewed as highly trustworthy. His work is excellent and he has an outstanding reputation in a critical area. Professor T is confident that if Applicant's family were pressured in Lebanon that he would take the appropriate actions. He does not view Applicant as a security risk

Thus, I conclude that it is unlikely that he could be exploited by coercive or non-coercive means by the government of Lebanon in a way that could force Applicant to choose between loyalty to his family in Lebanon and his loyalty to the United States. For example, his siblings work in the private sector and are not agents of the government. In the unlikely event that an attempt be made to pressure his family, his colleagues assure that Applicant would contact the appropriate officials. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. In reaching my conclusion, I have considered the totality of those ties and contacts, not just each one in isolation as the Appeal Board has mandated in the Appeal Board Decision and Reversal Order in ISCR Case No. 02-22461 (October 27, 2005) at 6.

Applicant has done highly sensitive work at a military college and university and receives lavish endorsements and

recommendations for a security clearance from six of his colleagues. Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given his strong ties to the U.S. with his immediate family in the U.S., Applicant established that there is little likelihood that he would submit to any potential pressure on his family who remain in Lebanon. His professional colleagues vouch for his allegiance to the U.S. and his trustworthiness. Thus, I conclude there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.)

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude Applicant's family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant. Thus, foreign influence security concerns are mitigated under a whole person analysis. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.b. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline C FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline B FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).
2. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport" The DoD August 16, 2000, Policy Clarification Memorandum stated, in part: "The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. **** Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government."
3. **E2.A3.1.3. Conditions that could mitigate security concerns include:** E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country; E2.A3.1.3.2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship; E2.A3.1.3.3. Activity is sanctioned by the United States; E2.A3.1.4.4. Individual has expressed a willingness to renounce dual citizenship.
4. E2.A2.1.3 Conditions that could mitigate security concerns include: 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; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.