

KEYWORD: Foreign Influence

DIGEST: Applicant's foreign connections that include his foreign family members, specifically his mother, brother and two sisters, have been mitigated. Clearance is granted.

CASENO: 04-05739.h1

DATE: 01/24/2005

DATE: January 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05739

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Richard S. Price II, Attorney At Law

SYNOPSIS

Applicant's foreign connections that include his foreign family members, specifically his mother, brother and two sisters, have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On July 30, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on a date uncertain, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 1, 2004. A notice of hearing was issued on November 8, 2004, scheduling the hearing for November 23, 2004. At the hearing the Government presented six exhibits. The Applicant testified on his own behalf. The official transcript (Tr.) was received on December 8, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 35 years of age and holds a Masters Degree in Software Engineering. He is employed as an Executive Vice President for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant is a dual citizen of Jordan and the United States. He was born in Jerusalem, Israel. As a Christian, he did not obtain Israeli citizenship. As an Arab Christian, Jordan granted citizenship to him and his other family members. In 1988, he came to the United States to pursue a college education. Ten years later, in 1998 or 1999, the Applicant became a naturalized United States citizen.

The Applicant's mother is a Jordanian citizen. She is also a permanent resident of the United States, awaiting to apply for United States citizenship when she is eligible. The Applicant's mother resides with the Applicant in the United States. However, she is presently on an extended visit in Israel (the past two years) because of her daughter in Israel who was diagnosed with a mental illness requiring her temporary assistance. The Applicant contacts his mother in Israel by telephone about once a week. The Applicant also financially supports his mother when she is living with him in the United States as well as during her extended visit in Israel. He currently sends her between \$1,500.00 and \$2,000.00 three to four times a year for her daily living expenses. The Applicant's mother plans on returning to the United States soon. (Tr. p. 29). His father passed away in 1990.

The Applicant's brother and two sisters are also citizens of Jordan and are residents of Jerusalem. One of his sisters is a nurse. His brother works for the Catholic Church of Jerusalem. Since the Applicant's mother has become a permanent resident of the United States, she has initiated an immigration application for the Applicant's sisters and brother. They intend to move to the United States when they are eligible.

The Applicant traveled to Israel in 1994, August 1999, April 2000 to attend his son's baptism and July 2002 to attend his brother's wedding.

The Applicant's wife and two children are United States citizens. The Applicant owns a home in the United States and other investments. He has no property or any other assets in any foreign country.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances

- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress

- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The evidence establishes that the Applicant is not vulnerable to foreign influence. He, his wife, and his two children are United States citizens. His mother is a permanent resident of the United States, planning to become a United States

citizen when eligible, who permanently resides with the Applicant. She is temporarily visiting Israel to take care of a sick daughter and will be returning to the United States soon. The Applicant also has a brother and sister in Israel however, his contacts with his foreign relatives are not of a nature to influence his security worthiness. There is no evidence in the record that any of his other family members, namely his mother, brother or two sisters in Israel have any connection with the Israeli or Jordanian Government, or are in a position to be exploited by the Israeli or Jordanian Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. In fact, his family members in Israel are planning on moving to the United States as soon as their immigration status permits. Mitigating Condition (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 the loyalty of the person(s) involved and the United States applies.* Based on the foregoing, this does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant 1.c.: For the Applicant

1.d.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to

grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge