

KEYWORD: Foreign Influence; Foreign Preference; Personal Conduct

DIGEST: Applicant's contacts with his immediate family do not place him in a position of vulnerability to foreign influence because of the overall sporadic nature of the contact, and his ties to the United States (U.S.) Applicant's testimony and documented compliance with the "Money Memorandum" sufficiently persuade me to find Applicant's paramount allegiance is to the U.S. Conversely, Applicant's questionable judgment in omitting the required information on his security clearance applications (SCAs) has not been successfully rebutted. Clearance is denied.

CASENO: 04-08867.h1

DATE: 05/31/2006

DATE: May 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08867

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Thomas R. Present, Esq.

SYNOPSIS

The foreign influence and foreign preference concerns have been mitigated. Applicant's contacts with his immediate family do not place him in a position of vulnerability to foreign influence because of the overall sporadic nature of the contact, and his ties to the United States (U.S.). Applicant's testimony and documented compliance with the "Money Memorandum" sufficiently persuades me to find Applicant's paramount allegiance is to the U.S. Conversely, Applicant's questionable judgment in omitting the required information on his security clearance applications (SCAs) has not been successfully rebutted. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 20, 2005, under Executive Order 10865 and Department of Defense Directive 5220.6, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under foreign influence (Guideline B), foreign preference (Guideline C), and personal conduct (Guideline E) of the Directive. Applicant answered the SOR in writing on June 7, 2005. The case was assigned to me on December 8, 2005. On December 12, 2005, a hearing was scheduled on January 5, 2006. The Government submitted 16 exhibits (GE). Applicant submitted four exhibits marked as (AE A through D). Testimony was taken from Applicant. The transcript was received on January 20, 2006.

RULINGS ON PROCEDURE

Applicant submitted post hearing documentation on January 18, 2006 that has been marked as AE E and AE F. AE E contains: (1) a January 6, 2006 letter (from the Government to Applicant's attorney) providing verification the "Money Memo" was copied and received by Applicant's attorney; and, (2) documentation indicating Applicant's passport was delivered to the local Lebanese consulate. AE F contains: (1) a request for an interim clearance; and (2) various job offers and postings. The Government registered no objection to AE E, and the exhibit is admitted in evidence. The Government objected to AE F because (1) the Government has no authority to grant interim clearances, and (2) the Applicant's desire to be working does not have a bearing on his security clearance suitability. The Government's objection to AE F is sustained. I have no authority under the Directive to grant interim or conditional clearances. Applicant's postings and job offers with other prospective employers are material but not relevant to his security clearance eligibility. In addition, the postings cannot be considered as character evidence either.

FINDINGS OF FACT

The SOR has five allegations under paragraph 1, foreign influence (Guideline B); and three allegations under paragraph 2, foreign preference (Guideline C); and four allegations under paragraph 3, personal conduct (Guideline E). Applicant admitted the factual allegations under paragraphs 1 and 2 but denied the legal conclusions. He denied the factual allegations and the legal conclusion of paragraph 3.

Applicant is 43 years old and has been employed as a linguist by four defense contractors since August 2003. He has never had a security clearance.

Applicant was born in Kuwait on September 9, 1942 to Lebanese parents. In 1981, Applicant graduated from a Kuwaiti high school. In 1987, Applicant decided to continue his education in the United States (U.S.), and he took English language courses at two universities in the southwest and the south. After getting married in 1989, Applicant moved to the local area for additional English and computer courses. He lives with his mother in a house he purchased in July 1997 (GE 2, GE 8).

Foreign Influence. Applicant's mother is 77 years old. She was born in Lebanon. She emigrated to the United States (U.S.) and has been living with Applicant since 1994. She became a U.S. citizen in 2003 (AE D). She receives social security and some help from Applicant.

Applicant's two sisters, resident citizens of Lebanon, were born in Kuwait (subparagraph 1.a.). His 41-year-old sister is married and is a housekeeper. She has four children. The oldest is 18 years old. Applicant has not had physical contact with her since 2002 when he saw all his immediate family members in Lebanon at his father's funeral. The last time he saw her before 2002 was in 1997. Applicant speaks about three or four times a year with this sister.

The second sister is 39 years old. She is seeking U.S. citizenship (Tr. 101; AE B). Her husband is a colonel in the Lebanese Army (subparagraph 1.d.). Applicant's only meeting with the colonel was at the funeral in 2002. Applicant has no idea what the colonel does in the Lebanese Army (Tr. 47).

Applicant's third sister and brother, Lebanese citizens, are residing in the U.S. (subparagraph 1.b.). His third sister is 31 years old, married to a U.S. citizen, and has two children. She has been in the U.S. since 1994; she has a green card and has been fingerprinted for probable citizenship (Tr. 103). Applicant has frequent contact with her, having spoken with her four or five days before the hearing. Applicant's 27-year-old-brother was imprisoned in 1998 for a vehicular manslaughter conviction (subparagraph 1.c.). Applicant believes his brother will be deported in 2006 (after his completion of his sentence) for committing a felony while in a resident alien status. The brother has contacted Applicant three times while in prison (Tr. 106). Applicant traveled to Lebanon twice in 1997 and once in 2002 (subparagraph 1.e.).

Foreign Preference. Applicant exercises dual citizenship with the U.S. and Lebanon (subparagraph 2.a.). He received a Lebanese passport on July 19, 1997, even though he had become a U.S. citizen in September 1995, and possessed a valid U.S. passport he received in January 1996 (subparagraph 2.b.). He used his Lebanese passport instead of his U.S. passport to enter and exit Lebanon in 1997 and 2002 (subparagraph 2.c.).

In his January 2005 answer to the SOR, Applicant indicated he had no problem mailing his passport to DOHA. At the hearing in January 2006, Applicant testified he was willing to renounce citizenship (Tr. 57), but had taken no steps to relinquish his passport (Tr. 126), or to renounce his Lebanese citizenship (*Id.*). On January 18, 2006, Applicant provided documentation (AE F) he had surrendered his Lebanese passport to the Lebanese consulate.

Personal Conduct. To facilitate the factual discussion of this issue, the pertinent exhibits are listed below:

GE 1 (Armed Forces employment application for linguists, dated November 2002)

GE 2 (SCA), dated January 2003

GE 3 (SCA) dated September 2003

GE 4 (SCA) dated January 2004

GE 5 (Applicant's response to interrogatories), dated June 2004

GE 6 (SCA) dated August 2004

AE A (SCA) same as GE 6 with handwritten corrections in red and black ink.

GE 7 (SCA) dated October 2004

GE 8 (SCA) dated December 2004

Subparagraph 3.a. alleges Applicant deliberately omitted information from three SCAs in January 2003 (GE 2), September 2003 (GE 3), and January 2004 (GE 4), by answering "no" to question 15 asking for whether he had an active passport issued by a foreign government in the last seven years. Applicant stated his incorrect answers occurred because he initially misunderstood the question and did not understand the importance of the SCA. He thought a security clearance was like an identification card for work. In addition, of all the languages Applicant can speak, he has least command of the English language (Tr. 60). It took him four or five days to fill out the first SCA. In filling out GE 3 and GE 4 for subsequent employers, the process involved just changing the names and dates on the forms. He really did not review the two subsequent forms before they were submitted. Neither the signature page nor Applicant's signature appears on the three forms (subparagraph 3.a.).

Applicant answered the government's interrogatories in June 2004 (GE 5). In response to the only question in the interrogatories, he was asked why he did not list possession of his Lebanese passport in his SCA? Applicant's written reply indicates, "Because it was expired, I only kept it as proof for my travel activity. It is no longer good for travel."

Subparagraph 3.b. alleges Applicant deliberately omitted information from an SCA he submitted in October 2004 (GE 7) by answering "no" to question 15 asking whether he had an active passport issued by a foreign government in the last 7 years. In explaining his "no" answer to GE 7, he referred to his copy of GE 6 dated August 2004 (AE A; GE 6).⁽¹⁾ Applicant testified the FSO told him to answer "no" to question 15 when he was going to answer "yes" to the question (Tr. 147). Applicant's "no" answer to question 15 (typewritten in black without any handwritten entries next to it) is incorrect as Applicant had an active foreign passport within the last 7 years of his certification/signature to GE 6 and 7. Then, Applicant testified, "Because he told me, count the dates. Which is I wrote it down. And he told me, no, don't put it there. Tell them the date. Not from 1-1, like 2001. No. From the date - -July 2, 2004. That is gone." (Tr. 146) While Applicant agreed he had a passport within the last 7 years of the date he signed GE 6 (Tr. 148), he blamed the FSO for his "no" answer. Then, Applicant testified the handwritten corrections were made to AE A (GE 6), and he went to a computer and effected the appropriate changes (Tr. 152).

Subparagraph 3.c. alleges Applicant caused to be electronically submitted 3 SCAs in January 2003 (GE 2), September 2003 (GE 3), and January 2004 (GE 4), but deliberately did not list his travel (Question 16) to Lebanon in July and August 1997. When asked why he did not list his July 1997 foreign trips in GE 2, Applicant testified he did not have to disclose his trips to Kuwait and Lebanon in July and August 1997 because his Lebanese passport had expired (Tr. 134). Applicant's Lebanese passport did not expire until July 2002.

Subparagraph 3.d. alleges Applicant executed an SCA in August 2004 (AE 6), however, the allegation states he deliberately failed to list his travel (Question 16) to Lebanon in July and August 1997. The only location where Applicant disclosed his 1997 trips to Kuwait and Lebanon was in GE 1.⁽²⁾ A finding in Applicant's favor is required

under subparagraph 3.d. (GE 8) because he answered question 15 correctly by stating he had a valid foreign passport in the last 7 years.

Having weighed and balanced the entire record, including Applicant's demeanor at the hearing, Applicant's credibility is weakened by the number of times he omitted information about his passport and his foreign trips in July and August 1997. His typewritten responses to question 15 (active foreign passport) of GE 6 and GE 7 are incorrect.

Subparagraph 1.e. alleges Applicant traveled twice to Lebanon in July 1997⁽³⁾ and February 2002 on a Lebanese passport, thereby concealing his foreign travel and making himself vulnerable to pressure and influence by a foreign government. His actions in surrendering his passport render it less likely he will fall susceptible to foreign influence or pressure.

Applicant has never accepted any educational, medical, or other kinds of benefits from any foreign country (Tr. 55). Applicant has no financial interest in any foreign country (Tr. 41). Applicant cannot be pressured or influenced, and no one has tried to pressure him since he has been working as a linguist (Tr. 41). Applicant also claims he passed a polygraph about whether he provided truth on the SCAs. Applicant's responses regarding his passport and foreign trips unequivocally reveal incorrect information on GE 2 through GE 7.

Character evidence. At the hearing, Applicant expressed his anguish about having his honesty and integrity challenged by the security clearance investigation. Applicant submitted no character evidence about his job performance or other aspects of his lifestyle. The job postings do not qualify as character evidence. Rather, they indicate a need for the expertise.

Lebanon. Until the prime minister of Lebanon was assassinated in early 2006, the country was relatively peaceful after the end of the sixteen-year civil war in 1991. The Lebanese form of government is parliamentary with power shared by three religious sects. Though an assassination of the country's prime minister led to the withdrawal of a sizeable number of Syrian troops within the last year, Syria still maintains intelligence units in the country to perpetuate an ongoing influence on political affairs. According to the U.S. Department, there are still several terrorist organizations in the country.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531 "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Foreign Influence

The security concern emerges 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 not citizens of the U.S. or may be subject to duress. Contacts with citizens of other countries or financial interests in other countries are also relevant in deciding whether these contacts make the individual potentially vulnerable to coercion, exploitation, or pressure.

Foreign Preference

The security concern arises when an individual acts in a way that indicates a preference for a foreign country over the United States (U.S.).

Personal Conduct

Demonstrating poor judgment or dishonesty during the security investigation also exemplifies poor judgment and may indicate the individual will not be a suitable candidate to safeguard classified information.

CONCLUSIONS

Foreign Influence (FI). A security concern is raised under the FI guideline because Applicant has two sisters who are resident citizens of Lebanon, a brother (incarcerated in a U.S. prison) and a sister who are citizens of Lebanon but living in the U.S., and a brother-in-law who serves in the Lebanese Army. FI disqualifying condition (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*) applies. Because Applicant's brother-in-law is a Colonel in the Lebanese Army FI DC E2.A2.1.2.3. (*relatives, cohabitants, or associates who are connected with the any foreign government*) also applies. Furthermore, the political character of the country involved must be evaluated to determine whether Applicant's position of vulnerability increases or decreases under FI MC E2.A2.1.3.1.

The foreign influence concerns associated with foreign citizenship and/or residency of close family members may be mitigated by FI mitigating condition (MC) 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 U.S.*). The burden is on the Applicant to demonstrate his ties to Lebanon do not put him in a position of vulnerability to foreign influence.

With respect to Applicant's three sisters, the evidence supports application of FI MC E2.A2.1.3.1. The 41-year-old sister is a housekeeper. The 39-year-old sister was a bank manager but currently is a homemaker. She is seeking U.S. citizenship though record is silent on where she is in the naturalization process. Applicant's third sister, 31 years old, has lived in the U.S. since 1994. There is no information on her current occupation, however, she is closer to U.S. citizenship than her 39-year-old sister. In sum, there is nothing in the record that could be construed to show the three sisters are agents of a foreign power or in a position to be exploited.

Applicant's brother-in-law (husband of Applicant's 31-year-old sister) is a colonel in the Lebanese Army. The Appeal Board has held that a member of a foreign military is considered an agent of a foreign power. ISCR Case No. 02-29143 at 3 (App. Bd. Jan. 12, 2005). Notwithstanding, Applicant does not know what the individual does in the Army. The first and the last time Applicant saw the brother-in-law was in 2002. Even though FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*) may not be applied with Applicant's immediate family members, Applicant's position of vulnerability to foreign influence through his brother-in-law must be regarded as minimal at best.

Applicant's only brother is clearly not an agent of a foreign power. He has been incarcerated since 1998. It seems unlikely that Lebanon would use resources to direct pressure at and through the brother to Applicant, even after the brother completes his sentence and is probably deported to his country of citizenship. Notwithstanding the recent political developments in Lebanon in the last year, I conclude that Applicant has met his burden of persuasion under FI MC E2.A2.1.3.1. Finding is for Applicant under the FI guideline.

Foreign Preference (FP). The FP guideline is based on actions taken by an individual that indicate preference for a foreign country over the U.S. Applicant's conduct activates FP DC E2.A3.1.2.1. (*the exercise of dual citizenship*) and FP DC E2.A3.1.2.2. (*possession and/or use of a foreign passport*) Applicant exercised dual citizenship by obtaining a Lebanese passport after receiving his U.S. citizenship in 1995 and his U.S. passport in 1996. Additional evidence of dual citizenship came when Applicant used his Lebanese passport in July 1997 and 2002.

There is essentially one mitigating condition under the FP guideline that has the potential of mitigating Applicant's actions indicating his preference for a foreign country over the U.S. Because he committed acts showing he wanted to take advantage of a benefit or privilege of foreign citizenship, FP MC E2.A3.1.3.1. (*dual citizenship is based solely on parent's citizenship or birth in a foreign country*) is insufficient to mitigate his exercise of dual citizenship. However, considering the evidence as a whole, I find sufficient evidence under FP MC E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). Applicant has articulated his willingness to relinquish his passport and/or renounce his citizenship. His passport is expired and must be considered an inoperative document. While he always could apply for a new passport, Applicant's action in surrendering his expired passport to the Lebanese consulate establishes sufficient evidence of his willingness to renounce his dual citizenship. Accordingly, I find in Applicant's favor under the FP guideline.

Personal Conduct (PC). Though Applicant's explanation for not providing his passport information under the first three SCAs makes little sense, he is given the benefit of the doubt because of the lack of attention he devoted to the earlier SCAs and his inexperienced perception of a security clearance as analogous to an identification card.

While the question in the interrogatory in June 2004 was framed in different words, Applicant was placed on notice by (GE 5) that the Government was concerned as to why he did not disclose his Lebanese passport in the three previous SCAs. Yet, Applicant did not provide a persuasive reason why he continued to answer "no" to question 15 (foreign passport question) in GE 6 and GE 7. Having weighed and balanced all the evidence concerning subparagraph 3.b., the record does not support a finding against Applicant under PC DC E2.A5.1.2.2. (*the deliberate omission of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*). However, because questionable judgment is also a concern of the PC guideline, I conclude Applicant exercised questionable judgment within the meaning of the PC guideline. Applicant demonstrated even more questionable judgment with his explanations of AE A. His apparent reason for placing the exhibit in evidence was to show he sought help from the FSO, and corrections were made which were going to appear on a future SCA. Given his

representation, I cannot assign a credible reason why the FSO would instruct Applicant to answer "no" to question 15 (the foreign passport question) when he definitely had the Lebanese passport within seven years of GE 6 and GE 7.

Applicant also exercised poor judgment in omitting material information about his 1997 trips to Kuwait and Lebanon. Applicant's explanation (that his Lebanese passport had expired) makes no logical sense because question 16 asks for personal foreign travel on other than business in the last 7 years. Paragraph 3.d. is found in Applicant's favor as his 1997 travel occurred more than 7 years before he signed GE 6. In sum, Applicant's repeated difficulty in filling out the SCA raises lingering concern as to whether he will be able to consistently comply with all rules and regulations associated with safeguarding classified information.

Because there are no corresponding, mitigating conditions under the PC guideline for poor judgment, the circumstances surrounding the personal conduct allegations must be weighed under the whole person model (E.2.2.1.). Applicant omitted material information regarding his foreign passport and foreign travel from five SCAs. E.2.2.1.1. (*the nature, extent, and seriousness of the conduct*) Though his failure to omit his passport from three early SCAs is extenuated by his inattention, and misunderstanding of the seriousness of his omissions, his last two omissions occurred less than 2 years ago as indicated in E.2.2.1.3. (*the recency and frequency of the conduct*), and even though they may not have been committed knowingly E.2.2.1.2. (*the circumstances surrounding the conduct, to include knowledgeable participation*). Applicant was at least 39 years old when the omissions occurred. E.2.2.1.5. (*the individual's age and maturity at the time of the conduct*)

E.2.2.1.6. (*the presence or absence of rehabilitation and other pertinent behavioral changes*) and E.2.2.1.9. (*the likelihood of continuation or recurrence*) refer to evidence that convincingly demonstrates the conduct is unlikely to recur in the future. Applicant has been employed as a linguist by four different contractors since August 2003. Yet, he has provided no evidence regarding his job performance or other independent information providing insight into his reputation for trustworthiness and reliability. By omitting material information from several SCAs over a two-year period, Applicant has placed his credibility in question. Applicant's favorable but uncorroborated assertions about his character do not overcome the poor judgment demonstrated in not furnishing the required information on his SCAs.

Though Applicant eventually disclosed his foreign passport in GE 8, that disclosure does not eliminate poor judgment demonstrated in omitting his foreign passport from GE 6 and 7, or from omitting his foreign travel from GE 2, 3 and 4 (subparagraph 3.c.) An applicant is duty bound to be forthright during all phases of the security investigation.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Influence, Guideline B): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

Paragraph 2 (Foreign Preference, Guideline C): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 3 (Personal Conduct, Guideline E): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. For the Applicant.

DECISION

In light of all 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.

Paul J. Mason

Administrative Judge

1. AE A is purportedly a copy of GE 6 with handwritten entries (corrections) made by Applicant and his Facility Security Officer (FSO), to be used for submission in a subsequent SCA. The FSO's entries are in red and Applicant's in black.
2. However, he did not disclose his 2002 trip to Lebanon in AE A.
3. Applicant's 1997 trip itinerary took him to Lebanon from July 5 to July 23, followed by a trip to Kuwait from July 23 to August 3, concluding with a return trip to Lebanon from August 3 to September 4.